

Troubled KASHMIR

Exasperated Essays in Its Contemporary Politics

*These Essays Have Been Researched For Laski Centre For Social and
Political Research, New Delhi*

MAHANDER M. GUPTA



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Introduction Of Author and Of Research Centre

MAHANDER M. Gupta,

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Brief introduction of the Book.

This book tries to explain the relation of state power vis-à-vis its people. Though the state was created on the basis that it is the highest form of reason or spirit (in Hegelian sense) which will take care of all human aspirations but it has been found that modern state has assumed all powers under its domain. This book examines how the sovereignty of the people has been eroded over the passage of time and the state has become all powerful. Unless the sovereignty is restored to its people, as originally conceived, through Direct Democracy, all nationalities struggles, even after great sacrifices of the struggling people, will again throw a new state having the same old coercive apparatus at its command. This book in a sense challenges all nationalities struggles in all conflicting zones of the world that unless the leaderships of these struggles re-examine the powers of the newly emerging states (after victorious struggles) vis-à-vis their people i.e., who is sovereign state or the people, in practical terms, by clearly defining that unless state institutions and the people representatives are directly under the control of people in general, the sacrifices of the people will go in sheer vain.

This book is dedicated to all those who gave their

TODAY for our better

TOMORROW which is yet to come!

Promethus Bound



Prometheus, the Greek god, was punished as he stole Fire from heaven for the use of mankind. The above mythical representation signifies that who-so-ever fought for other causes was invariably punished.

Preface

These essays have been written during the last few years i.e. since 1992, when militancy in Kashmir was at its peak, and are trying to situate the persons and the politics of Kashmir in its proper perspective. The monumental tragedy of India's partition could not lessen the enmity between "nationalities" the basis of separate sovereign states. The struggle for establishing democracy in Pakistan which is still continuing is the fundamental reason that whichever political party comes in power, India particularly Kashmir remains a thorn in establishing good neighbourly relations. The power struggle in Pakistan between feudal class supported by Army vs. other democratic forces represented by youth especially students and working class has always resulted in Political forms which remained dependent upon Anglo-American block. Army -Bureaucratic alliance has succeeded in establishing itself as a power broker. The situation is such that no political party can remain in power for a pretty long time if it does not keep in humour this alliance. American imperialism controls Pakistan's politics and economy through its alliance. The struggles of youth in alliance with peasantry (in erstwhile East Pakistan under Maulana Bhashani) and nascent working class helped threw military dictatorship of Marshal Ayub Khan. Earlier

to that Pakistani press especially of Progress Publishers through its numerous articles, editorials and new reporting initiated a process of democratization of feudal institutions of Pakistan. The rising tide of these chain of newspapers " threatened the very existence of the ruling classes of that time", as aptly put by Tariq Ali in his, "Pakistan ; Military rule or Peoples Power". But the military dictatorship, which assumed seats of power directly with the help of Americans; on coming to power first throttled this democratic voice by taking over these chain of News papers. We can well imagine that nothing other proved so challenging to the Military rulers than these Newspapers. But the democratic struggles continued in Pakistan which culminated in ushering an era of parliamentary democracy. As the bourgeois - democratic revolution is incomplete, feudal - military nexus is still very powerful and does not allow democracy to have a fair play. Constant unleashing of oppositional forces, alternatively, is the political game this alliance plays. The problem in Pakistan is not the "problem of governance" as Mushahid Hussain states (Pakistan: problem of Governance) but the problem of weak bourgeoisie who could not lead the democratic revolution and could give head on challenge to feudal-military alliance. This is because bourgeoisie is still heavily dependent upon State's subsidy and has been unable to make alliances with liberals, intelligentsia, working class and influence media and other evolving democratic institutions. It is still mired in Islamic orthodoxy fearing that its secularized politics may isolate it from the general masses, which are under the spell of Islamic variants of various political parties who for their competing political trends make use of religion as a major ideological cover. Pakistani bourgeoisie can come in open only if increasing Working class of Pakistan in alliance with the youths and other liberal sections of the society including mass of oppressed women come to its support. For working class of Pakistan it is imperative that while fighting for its economic causes it should simultaneously demand the establishing and safeguarding the democratic institutions. American block aptly has had been using this weakness in Pakistan. So the twin factors both external and internal keep Pakistan on its tip toe as for as Kashmir is concerned.

Through these essays an attempt has been made to show that how since 1947 indigenous leadership in Kashmir (though oftenly foisted upon it) due to its politics helped in alienating the people. The politics in Kashmir revolved around one individual thereby making Kashmir what he wanted to make it. Kashmir enjoys autonomy through Article 370 (now diluted). We have tried to show that had this Article been not there land reforms would not have been possible and why preserving of this Article is still necessary. The problem of Kashmiriyat, a core of cultural identity, has assumed different meanings for different people. How Kashmiriyat is viewed by three regions of this state is important to understand before supporting any movement which bases its claim on cultural identity? The question of identity and its marginalization is seen by many social scientists due to unitary character of Indian state and they offer federalism as its solution where all cultures can grow and prosper equally. We are of the view that problem lies not in unitary or federal character of the state, but the class contradictions both at rural and urban centers. Any new form of governance brings with it its own problems and struggles do not stop just by having new governing structures, which are often of elitist in nature. We here offer a new model called "Participatory Democracy" the meaning and purpose of which is empowerment of people in general. The classless society can come about through it without having recourse to any hegemonic structures i.e. obviating the necessity of having elite formations.

The question of nationality which has assumed new meanings and is the current subject of discussion everywhere has been dealt herewith invoking the understanding of culture when it is understood different from class. We have tried to prove that the concept of culture has dialectical relation with relation of production and it has no autonomy of its own. There is nothing like Indian culture or Pakistan culture. It can be made use of by any political elite belonging to that "Culture". Whether "Kashmiri" people is a nationality or not and if so shall it be subjected to right of Nation for Self Determination and if not what comprises the ongoing struggle in Kashmir, which is of great concern to all of us? How a local majority can again

prove hegemonic ruling class for other local minorities must be taken into account while supporting majority demands. If nationalism is important sub-nationalism is equally important. How militancy in Kashmir came into being and what are its class forces and their motives are the substance of next chapter. But before Militancy in Kashmir is understood in its right perspective it is essential that we understand what comprises terrorism? Hence Terrorism's Anatomy needs to be analyzed before Militancy as has taken shape in Kashmir is understood. We feel that militancy is a direct outcome of latent class struggle of rural and urban poor against the Iron Triangle of politicians - bureaucrats - business class but in absence of substantial working class this class struggle was taken over by Rural Kulaks in combination with religious groups who provided it with needed ideology of Islamiyat. The concept of State and Sovereignty is dealt herewith as the State with its centralized structures has undergone many changes especially after the formation of European Union. Sovereignty, as it was understood, is being subjected to many changes especially in Latin American countries in shape of Bolivarian Circles, like in Venezuela, where power is being transformed from established state organs to the grass root level, which they call Participatory Democracy.

Lastly, a possible solution of Kashmir called Self Rule has been worked out on the basis of humanism, international brotherhood, rights of minorities, secularism and democracy. We have forcefully argued that by simply changing of ruling classes, being on the payroll of rich and the powerful, nothing substantial will change as for as peoples' problem of governance in this self rule has been well taken care of by providing tenure-based rotational governance for the Regional Assemblies which too will have rotational governance. The Constitutional head called Governor will be elected by the elected Assembly and this Governor will have no power to dismiss the elected Government.

These essays should be read and understood in historical context and is hoped that these essays will initiate further debates in the Troubled Kashmir.

I am thankful to Vinod and P.N. Raina without whose help this book would not have been possible.

New Delhi,
Sept. 2007

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Post script

What does the recent elections in Pakistan portend for the people of Pakistan in general? Though the mandate is fractured but there is one thing certain that it is an anti Musharaf vote albeit against the dictatorship in Pakistan. The cobbling of various political parties in a political democratic formation is something akin to national government. If the ruling parties do not fulfill the basic demands of the people, like controlling of inflation to the reasonable limit, checking prices, solving un-employment problem and above all checking ever increasing terrorism, there is a reasonable ground that people will start questioning the very basis of this government, as the major ruling political parties always put all Pakistan people's problems due to the eight years misrule of dictatorship. Before Musharaf did a coup d' tat against Nawaz Sharief government there were huge charges of corruption both against the Pakistan Peoples Party (PPP) and Pakistan Muslim League- (PML-N). Though the corruption charges could not be proved in court of law but it remained a fact that corruption was prevalent even during erstwhile democratic regimes. That is why if the ruling parties do not translate people's faith, which they have reposed upon them, into an honest and

efficient government, then people frustration may again invite the Army to overthrow this democratic government. The 2nd big challenge is Pakistan's relations with Anglo-American block which through its imperialist designs has converted Pakistan into its one of its satellite state. How Pakistan present ruling classes face the American challenge due to its highly fragile economy with external and internal loans running into billions of dollars remains a highly difficult question to answer?. If Pakistan shows its independence vis-à-vis America, then America will not only stop its economic aid to Pakistan but will also arm twist Pakistan to fall in line the way America wants to tackle terrorism not only in Afghanistan but within Pakistan itself. This twin challenge to Pakistan can be tackled to certain extent by having good neighborly relations with India by becoming its co-partner in trade and tariff and also forming an economic and security cartel with a joint group of countries like Russia, China, India and Iran.

Date: April 2008

Chapter-1

Kashmir History -A Panoramic View

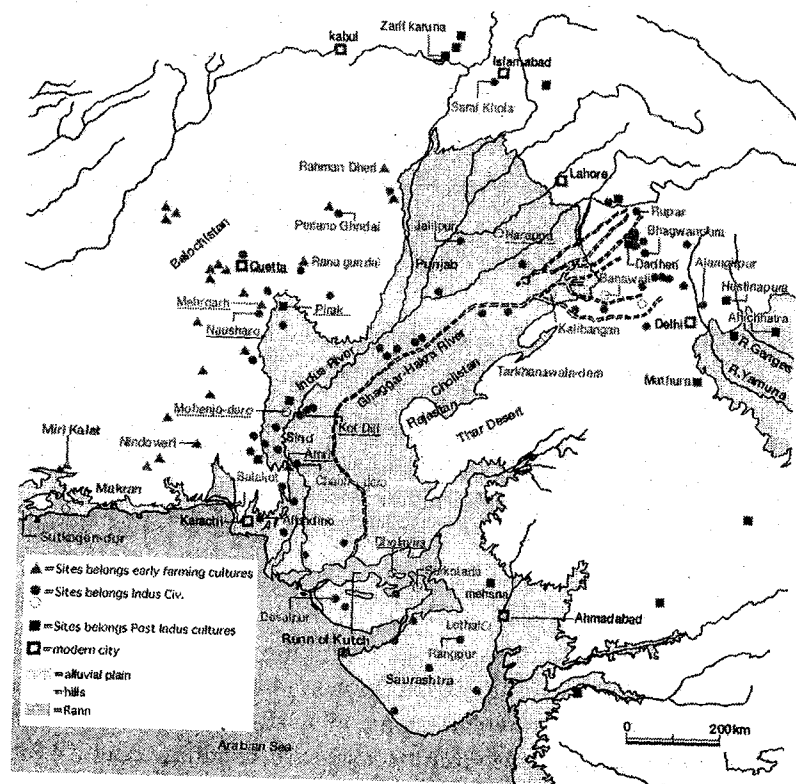
Events do not make history; it is people Who makes or mar history.

The Indus Valley Civilization was one of the world's first great urban civilizations. It flourished in the vast river plains and adjacent regions in what are now Pakistan and western India. The earliest cities became integrated into an extensive urban culture around 4,600 years ago and continued to dominate the region for at least 700 years, from 2600 to 1900 B.C. It was only in the 1920's that the buried cities and villages of the Indus valley were recognized by archaeologists as representing an undiscovered civilization¹.

The major cities of the Indus Valley Civilization, such as Harappa and Mohenjo Daro, date back to around 3300 BC, and represent some of the largest human habitations of the ancient world.

Recent excavations in Pakistan and western India indicate that the civilization gradually became fragmented into smaller regional cultures referred to as Late or post-Harappan culture.²

The Pakistanis of Sindh, Punjab, Kashmir, the Baraouhis tribes of Balauchistan are the descendants of the Indus Valley Civilisation.³



Map of Indus Valley

Geography:

Height above sea level = 6000 feet.

Area = 2,22,236 Sq.Km. (it includes whole of J&K i.e. pre 1947 position).

Population. = 82 lakhs (app.)-1998 estimate

The total area of the State of Jammu and Kashmir is about 2,22,236 Sq Km, of which 78,114 Sq Km. is under the illegal occupation of Pakistan and 37,555 Sq km. under China. In addition to this, 5,180 Sq. Km. of J&K was illegally ceded to China by Pakistan under

the March 1963 Sino-Pak Boundary agreement. The State shares a 221 km international boundary with Pakistan in the Jammu region and 365 km. with China in its Ladakh sector. The line of control (LoC), which divides the Indian and Pakistani parts of the state, is 1001 km long (Jammu-205 kms., Valley-460 kms. and Ladakh/Siachen area-336 kms.). The border with China is 465 kms. long. Pakistan has annexed the districts of Dikaner, Baltistan, Gilgit, Muzaffarabad, Kotli, Mirpur, Poonch⁴

The valley is an ancient lake basin 140 km long and 32 km. wide.

Early Chroniclers

Kalhana : He describes history of Kashmir from earliest times to 1149-50 AD in Rajatarangni. This is the only chronicle of Kashmir of pre-history period.

Jonaraja : Two hundred years after Kalhana continued the narration down to the reign of Zainu-ul- Abidin i.e 1150 to 1459 AD.

Srivara : Wrote Rajatarangni after 1459 to 1486 i.e. accession of Fath Shah.

Prajyabhatta : Wrote Kashmir history from 1486 to 1512AD

Suka Pandit : Continued from 1517 to 1596-AD

Kashmir History:

HINDU PERIOD

1. Gonanda-1 was the first king of Kashmir i.e. 2450 BC. 21 dynasties ruled Kashmir till 1339 AD. Hindu age started declining from the establishment of Lohara dynasty in 1003 AD. It was overthrown in 1320 when Suhadeva was the king.

2. Zulju. A Mongol (non-Muslim) came from Turkistan. His army consisted both of Turks and Mongols; invaded Kashmir in 1320. Suhadeva the ruler, fled to Kishtwar (now in Jammu region) After looting Kashmir he withdrew due to shortage of supplies i.e. grain.

3. The great Mauryan emperor conquered Kashmir and established Srinagar around 250 B.C. This brought Buddhism to the region. Buddhism spread rapidly in the region by the time of the Kushan empire in 1st century A.D. Buddhism was at its peak during this time and spread to Ladakh, Tibet, and Central Asia. During Hindu period, Ashoka introduced Buddhism in 3rd century B.C. Asoka himself built many stupas. The rule of Asoka in Kashmir was followed by that of Jaloka, who is mentioned in Rajatarangini as his son.

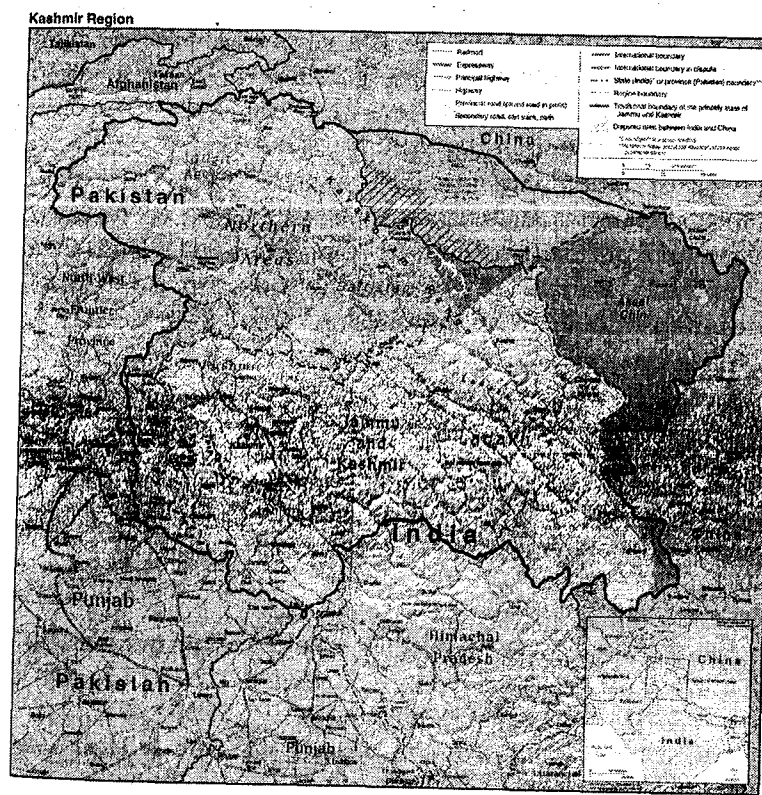
4. It was during the establishment of the Karkuta dynasty (627 A. D.) that the Chinese savant Huentasang came on a pilgrimage to Kashmir. Buddhism was then in a condition of decay in Kashmir as become evident from his remark "that the kingdom is not much given to faith and the temples of the heretics are their sole concern." The most important king of the Karkuta dynasty was Lalitaditya Muktapada (697 A.D. to 733 A.D.) During his reign Kashmir reached the highest peak of military glory. He led successful military expeditions in the south as far as Kanauj and held sway over a major portion of the Punjab in the south and Baltistan in the north. During Lalitaditya (697-738 AD) period, Kashmir was a part of India. Jayapira (764-795 A.D.) was a great conquerer and lover of learning. Vasugupta, the founder of Shaiva philosophy, belongs to this era. Avantivarman was the first Vaishnavite king of Kashmir. He was succeeded by his son Shankara Varman⁵ (883-902 A. D.) who was an ambitious and oppressive ruler.

During the reign of Shankara Varman the struggle between the Brahmins and other castes such as Kayasthas reached its climax. The power of Brahmins was broken. The Tantrins set up one king after another, and after some time the Utpala dynasty ceased to exist.

The following is the dynastic rule starting from;

Didda	980-1003 AD
Lohra dynasty	1003-1028 AD
Ananta'	1028-1063 AD

Harsha	1080-1101 AD
Harsha uchchala	1101-1111 AD
Sushala	1111-1228 AD
Jai Singh	1128-1155 AD
Gopadeva	1171-1180 AD
Rama Deva	1252-1273 AD



Map of Kashmir

MUSLIM PERIOD:

A. Indigenous Kashmiri Muslim Rulers.

Rinchan also called Sultan-sad-rud-din (1320 -23) was the son of a Ladakh's Chief. There were battles among Baltis and Ladakhi's of Ladakh. He fled from Ladakh and came to Kashmir. He remained silent till the withdrawal of Mongols from Kashmir. Rinchan through his men in garb of traders attacked Ram Chandra, the then District Chief of Lar, the only safe place when earlier Zulju attacked Kashmir. Ram Chandra was killed and thus Rinchan occupied the throne at the end of 1320 AD. He married the sister of Ram Chandra named Kota Rani. Rinchan conversion to Islam was from the hands of Sayyid Sharaf-ud-din, commonly known as Bulbul Shah, belonging to Suharawardy order of Sufis. Shah Mir was the trusted counsellor of Rinchan and guardian of Haider the eldest son of Rinchan. All ascended the Kashmir throne in 1339 under the title Sultan Shams-ud-din and laid the foundation of Shah Mir dynasty which ruled Kashmir for more than two hundred years. (From Shamusuddin in 1339 to Habib Shah till 1561) and the Chak dynasty from Ghazi Shah in 1561 to Yakub Shah-II till 1588. All chaks were Shias.

1539 -Fall of Sultanate.

One of the reason of fall of Sultanate was that ruling families of Chaks, Magres, Rainas and Dars were replaced by hierarchy of Mughal officers who became responsible for administration of Kashmir and its defense. Thus Kashmiri's lost their spirit and fighting qualities.

Mughal Period.

Yusuf Shah the last effective Chak ruler of Kashmir was defeated by the Mughal army led by Raja Bhagwan Dass, during the reign of Akbar. Yusuf Shah died in Patna as an exile. His son, Yakub Shah, ruled over Kashmir for some time but was defeated and displaced by the Mughals in 1686 AD.

In 1586 Akbar troops occupied Kashmir.

Akbar made Kashmir a separate province of Mughal empire. His son Jahangir had special liking for Kashmir. He described it as

"Heaven on earth" and embellished it with the famous Mughal gardens.

The Mughals used Bhimber, Rajouri - Nandi -Marg route for going to Kashmir from Punjab. Later Mughals patronized Kashmiri Brahmins who took to Persian language with gusto. Many of them came down to Delhi and Agra to work as scribes and tutors in the Mughals' households. Mohammed Shah, one of the later Mughal rulers of Delhi, decreed that Kashmir's Brahmins should be described as Kashmiri Pundits to distinguish them from local Brahmins. This name has stuck with them since then.

Mughal rule in Kashmir ended formally in 1752 when Ahamed Shah Abdali annexed it to his kingdom of Kabul. But, beginning of the end of Mughal rule took place in 1739 when Nadir Shah sacked Delhi and gave a body blow to the decadent Mughal empire.

Afghan Period:

Afghans were invited by Kashmiri people to rule Kashmir. Abdullah Khan Aqasi was the first Governor of Ahmed shah Abdali in 1752. Abdali died in 1772. His repeated incursions in Punjab weakened Mughal Administration and Marathas pretensions in North. This Power vacuum in Punjab was foiled by the Sikhs.

The total Muslim Rule in Kashmir remained from 1324-1819 (495 years)

Sikh Rule:

Jammu was annexed by Ranjit Singh in 1808. In 1819, Ranjit Singh occupied Kashmir (Sikh ruled about 17 years) In 1820 Ranjit Singh granted the Province of Jammu to Raja Gulab Singh. With the help of his able officer, Zorawar Singh, Gulab Singh soon captured Ladakh and Baltistan, regions to the east and north-east of Jammu Under Sikh supremacy, Kashmir was ruled by 10 Governors, 5 Hindus, 3 Sikhs, 2 Muslims. In 1839 Ranjit Singh died. Sikh Army defeated in battle of Subraon on 10th of Feb 1846 by British forces, thus it led to fall of Sikhs at Lahore.

18th March 1846 -Treaty of Amritsar, Gulab Singh became sovereign Ruler.

The Britishers allotted him all the hilly or mountainous country situated to the east of Indus and west of Ravi *i.e.* the Valley of Kashmir. Soon after Gulab Singh's death in 1857, his son, Ranbir Singh added the emirates of Hunza, Gilgit and Nagar to the kingdom.

The Princely State of Kashmir and Jammu (as it was then called) was constituted between 1820 and 1858. It combined disparate regions, religions, and ethnicities: to the east, Ladakh was ethnically and culturally Tibetan and its inhabitants practised Buddhism; to the south, Jammu had a mixed population of Hindus, Muslims and Sikhs; in the heavily populated central Kashmir valley, the population was overwhelmingly Sunni Muslims, however, there was also a small Hindu minority, the Kashmiri pandits, to the northeast, sparsely populated Baltistan had a population ethnically related to Ladakh, but which practised Shias Islam, to the north also sparsely populated, Gilgit Agency, was an area of diverse, mostly Shias groups; and, to the west, Poonch was having Muslim and Sikh population, but of different ethnicity than the Kashmir valley.

Jammu Kingdom:

The Kingdom of Jammu was founded by Raja Jambu Lochan, The Royal House of Jammu and Kashmir descends from Raja Suraj Dev, who ousted the Bajar Dhar dynasty and established himself as ruler of Jammu ca. 850 AD⁶.

The early rulers allied themselves with the Hindu Shahi rulers of Kabul. Raja Brij Dev, who succeeded his father in 1165, became a vassal of Shahab ud-din Muhammad Ghori. The state was invaded and plundered by Timur during his advance on Delhi in 1399, the Raja being forced to convert to Islam. Thereafter, the rulers of Jammu remained vassals of the Mughals until the early eighteenth century. They remained independent for the remainder of the century, but fell before the armies of Maharaja Ranjit Singh of the Punjab in 1808. The defeated Raja remained in post as a figurehead for a few years. Deposed in 1816, he removed his family to British territory, where they eventually received the Akhrota estate. After an interregnum of four years, Jammu was conferred on a junior branch of the family, in the person of Gulab Singh. Gulab Singh succeeded through diplo-

matic skill and force of arms to install himself as Chief Minister at Lahore. In that capacity, he negotiated and concluded the Treaty of Amritsar between the Sikh State and the HEIC. The reward for his exertions being the province of Kashmir, now converted into a hereditary principality conjoined to his family's hereditary possession of Jammu.

Dogra Rule.

By 18th March 1846 defined areas of Kashmir was transferred to Gulab Singh, the first Dogra Ruler by treaty of Amritsar by paying a indemnity of Rs Seventy Five Lakhs. Partab Singh son of Ranbir Singh succeeded him 1885. In 1888-89 urdu was introduced as Court language in Jammu while in Kashmir it was introduced in 1907. On June 1st 1912 State Subject came into being. Hari Singh, nephew ascended Kashmir throne after Partap Singh in 1925. The definition "hereditary State Subject" was introduced. Dogra rule remained up to Nov. 1947.

Presently, Jammu area is 26293 Sq.km. (it excludes area under Pakistan).

People of Jammu mostly speak Dogri, Kotli, Mirpuri, Hindi, Punjabi and Urdu.

HISTORY OF LADAKH

After the break-up of the Tibetan empire in 842, Nyima-Gon, a representative of the ancient Tibetan royal house founded the first Ladakh dynasty. Nyima-Gon's kingdom had its centre well to the east of present-day Ladakh. This was the period in which Ladakh underwent Tibetanization, eventually making Ladakh a country inhabited by a mixed population, the predominant racial strain of which was Tibetan. However, soon after the conquest, the dynasty, intent on establishing Buddhism, looked not to Tibet, but to north-west India, particularly Kashmir. This has been termed the Second Spreading of Buddhism in the region (the first one being in Tibet proper.) Little is known about the early kings of Nyima-Gon's dynasty. The fifth king in line has a Sanskrit name Utpala, who conquered Kulu, Mustang, and parts of Baltistan. Around the 13th cen-

tury, due to political developments, India was ceasing to have anything to offer from a Buddhist point of view, and Ladakh chose to seek and accept guidance in religious matters from Tibet.

The Namgyal dynasty Continual raids on Ladakh by the plundering Muslim states of Central Asia lead to the weakening and partial conversion of Ladakh. Ladakh was divided, with Lower Ladakh ruled by King Takpabum from Basgo and Temisgam, and Upper Ladakh by King Takbumde from Leh and Shey. Bhagan, a later Basgo king reunited Ladakh by overthrowing the king of Leh. He took on the surname Namgyal (meaning victorious) and founded a new dynasty which still survives today. King Tashi Namgyal (1555-1575) successfully managed to repel most Central Asian raiders, and built a royal fort on the top of the Namgyal Peak. Tsewang Namgyal temporarily extended his kingdom as far as Nepal. During the reign of Jamyang Namgyal, concerted efforts were made to convert Ladakh to Islam and destruction of Buddhist artifacts. Today, few gompas exist from before this period. Sengge Namgyal (1616-1642), known as the 'lion' king made efforts to restore Ladakh to its old glory by an ambitious and energetic building programme which rebuilt several gompas, the most famous of which is Hemis. He expanded the kingdom into Zaskar and Spiti, but was defeated by the Mughals, who had already occupied Kashmir and Baltistan. His son Deldan Namgyal (1642-1694) had to placate the Mughal emperor Aurangzeb by building a mosque in Leh. However, he successfully defeated the Mughal army in Baltistan.

Modern times

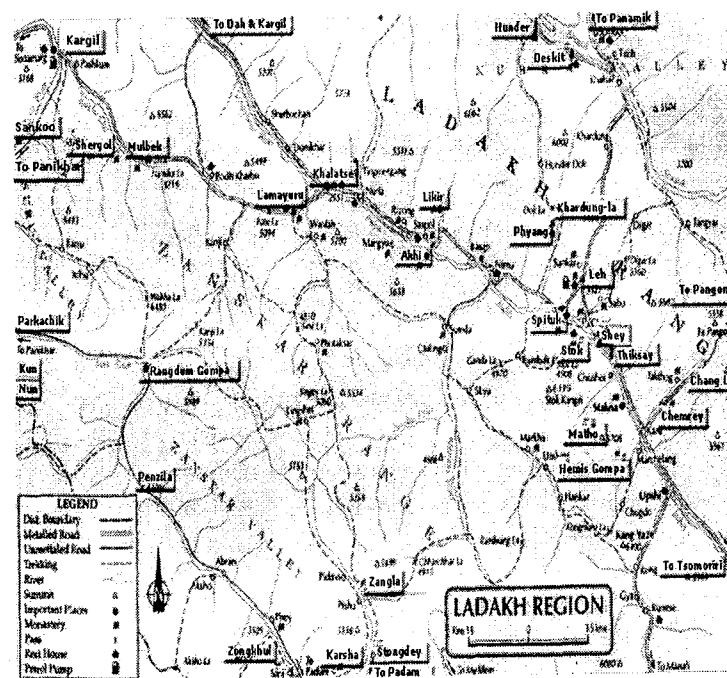
By the beginning of the 19th century, the Mughal empire had collapsed, and Sikh rule had been established in Punjab and Kashmir. Maharaja Gulab Singh's General Zorawar Singh invaded Ladakh in 1834. King Tshespal Namgyal was dethroned and exiled to Stok. Ladakh came under Dogra rule and was incorporated into the state of Jammu and Kashmir in 1846. Ladakh together with the neighboring province of Baltistan, was incorporated into the newly created state of Jammu & Kashmir, just over a century later, this union was disturbed by the partition of India, Baltistan becoming

part of Pakistan, while Ladakh remained in India as part of the state of Jammu and Kashmir.

Buddhism reached Tibet from India via Ladakh, and there are ancient Buddhist rock engravings all over the region, even in areas like Dras and the lower Suru Valley which today are inhabited by an exclusively Muslim population. Islam too came from the west. A peaceful penetration of the Shia sect spearheaded by missionaries, its success was guaranteed by the early conversion of the sub-rulers of Dras, Kargil and the Suru Valley.

The earliest layer in the population of Ladakh was probably composed of the Dardis.

Political history of Ladakh is found in the Kharosthi inscription of Uvima Kavthisa discovered near the K'a-la-rtse bridge⁷ on the Indus, showing that in around the 1st century, Ladakh was a



part of the Kushana empire. In the 8th century, Ladakh was involved in the clash between Tibetan expansion pressing from the East, and Chinese influence exerted from Central Asia through the passes. In 634/5 Zanzun acknowledged Tibetan suzerainty for the first time, and in 653 a Tibetan commissioner was appointed there. Regular administration was introduced in 662, and an unsuccessful rebellion broke out in 677. In 737, the Tibetans launched an attack against the king of Bru-za (Gilgit), who asked for Chinese help, but was ultimately forced to pay homage to Tibet. In 747, the hold of Tibet was loosened by the campaign of general Kao Hsien-chih. After the collapse of the Tibetan monarchy in 842, Tibetan suzerainty vanished quickly.

Modern times: History/Politics of Kashmir. For our present concern political history of Kashmir started with the arrival of Sheikh Abdullah in the early third decade of 20th century as a fresh post graduate.

Muslim Conference:

It was borne on 20th June 1931. Five members were selected to give a memorial of grievances to Maharaja. The grievances included more jobs for Muslims; safety for Muslim religious places and lowering of minimum qualification in government jobs.

Youngman's Muslim Association, Srinagar.

It was founded in June 1933 by Mohd Syed Masoodi. Sheikh Mohd Abdullah was its first leader.

First Legislative Assembly:

The first legislative Assembly of J&K comprising of Seventy five members was formed in 1934. From seventy five members thirty three were elected including twenty one Muslims, ten Hindus and two Sikhs. Forty two were nominated. This Assembly had a life of three years. First General Election were held on 3rd Sept. 1934. The basis of election was separate electorate.

National Conference:

On June 28, 1938 National Conference was borne. Of 14 Mus-

lim conference members only four were against the conversion of the Muslim Conference to National Conference. The purpose of this conversion was to broad base the activities of National conference among all sections of the people. On June, 11 1939 National Conference was formally launched. The Muslim conference was again revived on 15th June by the rivals of National conference and Ch. Ghulam Abbas (hailing from Jammu) was elected as its President at Srinagar.

Manifesto of National Conference.

Freda Bedi, wife of B.P.L. Bedi, an Indian communist leader, prepared the plan of the memorandum to the Royal Commission on 27th Feb. 1944, plan was presented to the working committee of National Conference, which accepted it and became party manifesto. Its main features were:

Institution of a National Assembly of the state.

Abolition of private property i.e. ownership of Industry and Industrial capital.

National Conference gave a call "Quit Kashmir" to Maharaja on 6th of May 1946.

15th August 1947

It was the day by which all the States /Princes had to accede either of the dominion i.e. India or Pakistan based on boundary commission. The J&K Maharaja did not join neither Pakistan nor India. Signed Standstill Agreement with Pakistan. In the meantime Pakistan raided Kashmir on 21st Oct. 1947. On 24th Oct. 1947 Sheikh Abdullah was released from the Jail and made Chief Emergency Administrator. Maharaja Hari Singh sought from Indian government Military help. Indian government insisted that unless J&K accedes to India, military help cannot be given.

27th October 1947.

Hari Singh signed Instrument of Accession with India for three subjects namely i/ defence ii/ Communication iii/ External affairs. Indian forces landed in Kashmir. Indian govt. took up the matter of

Pakistani Military aggression to Security Council It was decided by U.N. that both Indian and Pakistani armies should go back to their original position so that plebiscite could be conducted and on 1st of January 1949 ceasefire between India and Pakistan forces took place.

This way an area of 78,114 Sq Km. came under Pakistani occupation. China is illegally occupying 37555 sq. km. in Ladakh region. In addition to this, 5,180 Sq. Km. of J&K was illegally ceded to China by Pakistan under the March 1963 Sino-Pak Boundary agreement. The State shares a 221 km international boundary with Pakistan in the Jammu region and 365 km. with China in its Ladakh sector. The line of control (LoC), which divides the Indian and Pakistani parts of the state, is 1001 km long (Jammu-205 kms., Valley-460 kms. and Ladakh/Siachen area-336 kms.). The border with China is 465 kms. long. Pakistan has annexed the districts of Dikaner, Baltistan, Gilgit, Muzaffarabad, Kotli, Mirpur, Poonch and Bagh.

Gilgit Agency was the name of most of the area of northern Kashmir which formed dependency of Pakistan from 1947 to 1970, which was then merged into Northern Areas. The Agency was administered directly from Islamabad separately from the neighbouring state of Azad Kashmir and the princely states of Hunza and Nagar. The area of the Agency comprised the traditional region of Gilgit and most of the region of Baltistan. Both India and Pakistan recognise the regions of Gilgit and Baltistan as disputed and technically part of the divided State of Jammu & Kashmir.

The Northern Areas or Gilgit-Baltistan is the northernmost region of Pakistan.

Gilgit came under British rule in 1889, when it was unified with neighboring Nagar and Hunza in the Gilgit Agency.

Gilgit Agency was the name of most of the area of northern Kashmir which formed dependency of Pakistan from 1947 to 1970, which was then merged into Northern Areas. The Agency was administered directly from Islamabad separately from the neighbouring state of Azad Kashmir and the princely states of Hunza and Nagar. The area of the Agency comprised the traditional region of Gilgit and most of the region of Baltistan. Both India and Pakistan recognise

Regional Capital	Gilgit
Languages	Urdu Shina Balti Tibetan Wakhi Burushaski Khowar Pashto
Area	72,496 sq. km
Population	1,500,000 (App.)

the regions of Gilgit and Baltistan as disputed and technically part of the divided State of Jammu & Kashmir.

After 1947 India and Pakistan fought three wars : first in 1948, second in 1965 and third in 1971 due to the disputed nature of J&K region oftenly called Kashmir dispute. Since 1990 armed struggle is going on by various militant organisations supported by a section of Kashmiri people, aided and abetted by Pakistan. There are two variants of this armed struggle; one is for outright merger of Kashmir into Pakistan and the other variant is independent Kashmir i.e. whole of J&K as it existed before 1947, on the basis of separate nation which its proponent call Kashmiriyat.

The main political leaders and commentators who have had influenced Kashmir politics since the third decade of 20th century are;

Sheikh Abdullah, Ch. Ghulam Abbass, G.M. Ashai, Mirza Afzal Beig, Moullana Massoodi, Bakshi Gh. Mohd., Sardar Budh Singh, Prem Nath Dogra, Prem Nath Bazaz, R.C. Kak, Pt. Nehru, Sardar

Patel, Khrushchev, Gopallaswami Ayyenger, Mir Qasim, Mirwaiz Maulvi Farrook, Mohiuddin Karra, G.Parthasarthy, Stephen P. Cohen, among others.

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3. Moin Ansari, Kashmir Matters.
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7. History of Ladakh: Answers.com

Chapter – 2

The Politics of Sheikh Mohd. Abdullah in Kashmir

*Everyone is not Omar Mukhtar or Che Guevera,
there have been lesser ones also.*

On 8th August, 1953, Sheikh Mohd Abdullah, the mass leader and Prime Minister of Jammu and Kashmir, was dismissed and arrested. The significance of this day lies in the fact that limited accession (till that time) of Jammu and Kashmir with Indian Union came under cloud. Sheikh Mohd. Abdullah's arrest and his subsequent incarceration for a very long period, on the alleged assumption that he has subversive designs, resulted in souring of relations between this state and Indian Union with international ramifications.

Genesis of his Politics.

To understand the rule of Sheikh in Kashmir politics it is necessary to understand the genesis of his politics which he practiced since the time of his arrival from Aligarh Muslim University as a post-graduate in 1929 till 1975 i.e. upto Indira-Sheikh accord. When he arrived in Kashmir in 1929 Ahmediyas acting as a politico-religious group were operating among the substantial sections of Kashmiri Muslims. Their only rival at that time was Mirwaiz Yusuf Shah. Ahmediyas being influential, Sheikh decided to join them in order to have a foothold in Kashmir. He intelligently made use of this organization and was successful in forming friendship with

the few educated people who have earlier collected under the name of READING ROOM PARTY. He alongwith some of his friends formed Young Men's Muslims Association and became its founder president. Through this organization he started petitioning to Maharaja for redressal of grievances of Muslims like proportional representation in jobs and some other considerations in Muslim religious affairs. With the formation of Muslim Conference he was more forthright and active for demands of Muslims. As now the Ahrar Party (a Punjabi nationalist conglomerate) had penetrated in Kashmir as also a religious political group and was influencing successfully the Kashmiri Muslims Sheikh did not lose this golden opportunity to form alliance with them. He formed this alliance at the expense of Ahmediyas who were compelled to leave the Muslim Conference. As Indian National Congress under the leadership of Gandhi and Nehru was successful in organizing Indian masses against Britishers, Sheikh felt the historical necessity to broadbase the Muslim Conference to which he was successful in converting it to the National Conference.

Understanding the historical inevitability of coming events he gave a call of "Quit Kashmir" though earlier he preferred to wrest some concessions for Muslims under the suzerainty of Maharaja. With the partition in 1947 the citadel of power came in his hands. Being aware of intricacies of power politics, he assumed socialistic postures and went ahead with "Land to the Tiller" policy thus divesting the large chunks of agriculture land from other non-muslim subjects. He understood that if economic power remains in Hindu constituencies he will not be able to retain power for long. So in one stroke, he killed two pigeons. He snatched the economic power levers from the big landlords (majority Hindus) thus depriving them of any say in State Politics and on the other provided immense relief to the downtrodden Kashmiri Muslims landless. Overnight he became a living messiah of the landless Kashmiri muslim peasants. This land distribution became his permanent constituency having doubly assured that this populism will endure him till he is alive. From 1947 till his dismissal from power in 1953 he never advocated Kashmir independence. On one side in 1948 he declared Pakistan

as aggressor in UNO having snatched Kashmir's territory by armed intrusion and on the other while speaking before the elected representatives of J&K he preferred and advocated Kashmir's Union with India rejecting the other two alternatives i.e. either of joining Pakistan or declaring Kashmir an Independent State (Sheikh's speech before state's Constituent Assembly before the elected representatives in Kashmir, in November 1951). But after his dismissal he floated "Plebiscite Front" and became its patron though officially he never became its member. Being a student of politics he knew that one should keep the front door closed when fighting with the perceived enemy but simultaneously should keep the back door open when the situation demands. So in 1975 he made use of the back door which culminated in Indira-Sheikh accord, thereby nullifying the self-determination of Kashmiri Muslims by dissolving the plebiscite front.

Sheikh Mohd Abdullah had many opportunities either to opt for Pakistan or for an independent Kashmir right from the time when he assumed political power till his death. Firstly, he had the opportunity when the aggression on Kashmir by Pakistan was stopped and the matter was referred by Pt. Nehru to UNO. Legally, Sheikh Mohd Abdullah could have objected that how a Prime Minister of India can act on behalf of Kashmir (if the accession was limited) in taking the Kashmir issue to UNO. Secondly, in 1951 before the State Constituent Assembly, he elaborated at length the advantages and disadvantages of joining either with India or Pakistan or having independent Kashmir. The record of his speech clearly demonstrates that till he was accepted as the independent Sultan of Kashmir he had no reason to be angry with Indian Union. But once his bonafides as an absolute ruler are suspected or challenged his wounded psyche suddenly became alive to the exigencies of the Kashmiri's plight. The floating of plebiscite ipso facto shows that he wanted bargain with Indian ruling classes using Kashmiri masses as his trump card. This should not be forgotten that whenever he talked of Kashmiri masses it precluded the Jammu and Ladakh regions as at no time they accepted his leadership.

Sheikh's Secularism

The secularism and non-secularism of Sheikh Mohd Abdullah overlap each other. Some people in a hurry call him a complete secular politician. Initially and even after joining Muslim Conference he pleaded the cause of downtrodden Muslims in the shape of petitions to Maharaja. His struggle against princely rule in J&K was seen having more of a nature of Muslims opposition to a Hindu king in non-Muslim areas than being an anti-feudal struggle. That is why there were few takers for National Conference in Jammu as well in Ladakh regions. Divesting of lands from landlords who happened to be mostly Hindus, influence of Praja Parishad (a hindu based jammu organization), lack of awareness in differentiating between anti-feudal and anti-hindu politics by Jammu/Ladakh based people were some of the causes for non acceptance of him as a secular politician. Not only this for the propagation of his political philosophy he choose Mosques.

It is true that politics in Kashmir revolves around Mosques; different leaders having different mosques as their area of influence and due to this reason it was difficult to differentiate between their communal/religious or secular politics. Symbols are important in attracting the people for a congregation. If certain symbols are associated with one religious group it becomes religiously difficult for other religious community (ies) to accept the overall leadership of a political leader belonging to other religion. Even the symbols which were used by Gopal Krishan Gokhale like Ganesh Pooja, Sanatanies slogan of Bande Matrem and the religious discourse by Mahatma Gandhi (being Hindu in origin) though used and propagated in a secular spirit came to be associated with Hindu hegemonic politics as was then understood by the initiator and consolidators of Muslim league in pre-partition India.

The last chance offered by history to Sheikh Abdullah to rejuvenate the Kashmir Masses was in the "unhistoric" accord between him and Indira Gandhi in 1975. Here he sacrificed the last vestiges of moral scruples and political ethics to the altar of Kashmiri masses. He negated everything which came to pass by his name i.e. Lion of

Kashmir. This long period from 1947 to 1975 clearly shows his political ambitions at the expense of everything.

Alienation.

His pragmatic politics left many in political quagmire and one feels that the seeds of alienation of Kashmiri masses were sown by Sheikh Mohd Abdullah himself i.e. the politics which he played He abandoned the slogan of Plebiscite on whose ideology thousands of cadres were built in Kashmir when he forged Sheikh-Indira accord in 1975. This accord can aptly be called a watershed in the whole political career of Sheikh. The Kashmir masses felt betrayed by him as he choose political power than to the plebiscite ideology. In his own scheme of things he realized that it is better to be in seat of power than to be in political wilderness. During his political wilderness from 1953 to 1975 Indian ruling ruling classes choose to ignore him and rather preferred to have people of their own choice in the seat of power in Kashmir. The futility of pursuing the plebiscite ideology dawned on him and he did not lose much time when Indira Gandhi through her interlocutors offered him political power. Indira knew that Sheikh with the passage of time was losing his foothold among the masses which he realized as well. She also knew that at this present juncture, when his youthful revolutionary energy is sapped, he can be a best bet in Kashmir politics, after failing to resolve Kashmir issue even after winning the 1971 Indo-Pak war. She offered him a hand of 'friendship' which was culminated in 1975 accord after protracted discussions between Sheikh loyalist Mirza Afzal Beig and Parthasarthy. Though Sheikh won the subsequent Assembly election with a majority (after breaking his alliance with Congress), his alliance with Indian ruling classes i.e. 1975 accord did not go well with the radical elements in Kashmir. The Kashmiri youth were visibly upset with him as they perceived it as selling the self-esteem of Kashmiri people. This can be testified by a small but significant episode in a local cinema hall where the English film Omar Mukhtar was being shown. In this movie a petty school teacher namely Omar Mukhtar of Libya in alliance with local people was giving a heroic resistance to the French colonialists and

preferred death than accepting any concessions for himself. This heroic deed of Omar Mukhtar had such an electrifying effect on the audience sitting in the cinema hall that they started raising slogans against the govt. and some of them in anguish tore the cushion seats on which they were sitting. The govt. of the day i.e. Sheikh govt. was panicked so much that they ordered to withdraw this movie for subsequent screening. This showed what was brewing inside the youth which had an element of shadow of coming events in Kashmir. One of the main clauses of the 1975 accord was to review the Indian laws which had been introduced after 1953 i.e. from the time of the dismissal of Sheikh by the subsequent Kashmiri leadership. Though a committee was appointed under the Ex Judge of the J&K High Court but nothing came out of it. Kashmiri people simply took as eyewash, to which by now they have been accustomed to, in the various political somersaults which earlier Kashmiri leadership performed while accepting Indian largesse. From the time when Sheikh emerged in Kashmir politics since pre 1947 days Kashmiri people had been bred on a radical ideology. His acceptance of power from the Indian ruling classes whom he castigated as the suppressor of democracy on his dismissal in 1953 shows his complete climbdown from his earlier radical ideology. This did not go well with the people of Kashmir for whom every word of Sheikh mattered like heavenly commandments. Hence, the alienation of the present Kashmiri youth, in addition to other factors, has its root in the politics which Sheikh Abdullah played in tandem with Indian ruling classes.

Political Strategist

The above analysis clearly demonstrates the politics he was pursuing. He made use of every opportunity which came in his way in furthering his own political position. Perhaps he knew both the clausewitz's and Mao's dictums that a victor should know where to stop; and there are no permanent friends or enemies as far as politics is concerned. In 1929 he made use of Ahmediyas, to gain his foothold in reaching to Kashmiri Muslim masses but when he found Ahrar more useful he abandoned Ahmediyas. Lately, he realized

the sectarian image of Muslim Conference and converted it into National Conference. He found nothing wrong till Indian state accepted him as an independent great Sultan of Kashmir but once ousted from power he started eulogizing Kashmiri peoples' blood which according to him had flowed heroically in fighting against the centuries old oppression of Dogra and other rulers. Again when he was brought back from political oblivion by Indira Gandhi in 1975 he without any moral scruples put the slogan of right of self determination of Kashmiris in dustbin in history.

The political chess-board of which he was a great master taught him how to project oneself in history. He was conscious of his political acts and thus whenever he changed sides or political stances he took every care that he should not be branded as an opportunist, a self seeker or power broker. His whole politics and actions were pragmatic, though cynical in nature, because he knew that till the levers of power are in one's hand one can play either way according to the exigencies of time. Political principles or moral scruples had any meaning for him till they served his pragmatism after that they had no utility for him. Thus in one sense he was Toyanbeean believing in subjectivist elements of nationalism. It is equally true that he fought great battles and aroused the Kashmiri masses from long slumber, their great oppression, their great servitude and superstitions and provided them a sense of self esteem by making them the masters of their own destinies. He overrode them like a colossus, deserving so, as very few in history have ruled the hearts and minds of the masses for such a long time notwithstanding the present militancy and the alienation of Kashmiri youth for whom Sheikh's politics, in addition to other factors, is responsible for the present affairs of J&K State. Sheikh will go down in the Kashmir history as one of the great pragmatic politician for whom levers of political power were more important than sheer political consistency or moral scruples.

Chapter-3

Historical Significance of Article 370

Some Articles are article of faith to its people; their preservation or abrogation should be subjected to Peoples' Will.

On 30 April, 1860, Lord Canning, Governor General, recommended the sovereignty of States of British India. Constitutionally; the States were not part of British India. British Parliament had no power to legislate for the States or their people. Lord Linlithgow, Chairman, Joint Select Committee, of both houses of Parliament, issued a statement of His majesty Government that Dominion status was the natural issue of India's progress. But Jinnah in January 1940 declared that Hindus and Muslims formed the two separate nations and desired that Muslim nation must have a separate homeland. After Labour party came in power in Britain it decided to send a ministerial delegation to India to enable Indians to produce a machinery for constitutional structure for India as a whole. For this purpose three cabinet ministers, lately came to be known as Cabinet Mission, Lord Pethick-Lawrence, Sir Stafford Cripps and A.V. Alexander arrived in India on 24 March, 1946. In reply to a specific question whether representatives of the states would be representatives of the Rulers or of the people, Lawrence declared that Mission would take the position as it was.

ACCESSION

The Indian Independence Act which brought about the partition of the country failed to provide for the future relationship of the two dominions with the Princely states. Rather under the terms of the Indian Independence Act of July, 1947, the Rulers of 570 odd Indian States assumed full sovereignty and competence to accede to, or federate with, either Pakistan or Indian or to remain independent. The British government was of the opinion that no specific provision in Indian Independence Act was necessary. The Cabinet Mission was not in favour of any rigid proposals for Indian States. So it was quite clear that if the option to the states to remain independent was not explicitly open it was not closed also. With the lapse of British Paramountcy the states were practically independent. Axiomatically, the state of Maharaja Hari Singh became an independent entity as soon as it was released from the allegiance to the British crown under the Indian Independence Act. The stress on the states to join either of the Dominion flowed from facts of practicality and viability of the states. J & K State choose to remain independent till 26 October 1947 and its Accession to India was due to sheer circumstances that were forced upon her. It was the broken promises of Pakistan who did not abide by the Standstill Agreement on which it had put its official seal. But the Accession of J&K to India by Hari Singh did not make him a mere appendage of the Indian Dominion. This can be attested from one of the provisions of the Instrument of Accession (see Appendix) which states that, "Nothing in this Instrument effects the continuance of my sovereignty in and over the state or exercise of any power". This and other provisions of the Instrument of Accession were accepted by Lord Mountbatten, the then Governor General of India, on 27 October 1947. This clearly demonstrates that the Maharaja remained a sovereign in every respect inspite of J&K Accession to India. As the Accession was not in line with the assumption that J&K being a Muslim majority area should have gone to Pakistan, so it was made mandatory that J&K peoples Will be determined. This shows that Instrument of Accession to India was temporary in nature subject to the determination of the will of its people, which was conveyed in a

letter of 27 October 1947 of Lord Mountbatten to Maharaja of J&K (See Appendix). This provision was duly agreed upon by Pt. Nehru. Had provisions of this instrument of accession not been provisional India would not have taken J&K issue to Security Council under U.N. Article 35 rather it would have asked U.N. to direct Pakistan to vacate its territory under Article 31. So the state of J&K acceded to India on 27 October 1947 with the condition that wishes of the people will be known after law and order has been restored in the state.

Making of Article 370

The interim government of J&K was instituted by a proclamation made by Maharaja on 5 March 1948. A council of ministers with Sheikh Abdullah as Prime Minister was constituted to conduct the administration of State. The interim government of J&K nominated four members to represent J&K state in Constituent Assembly of India. These representatives joined the Constituent Assembly on 6 June, 1949. N. Gopalaswamy Ayyangar was asked to prepare a draft of Article regarding the special provision of J&K in the light of the discussions which Nehru had with Sheikh in May, 1949. Ayyangar prepared a draft Article 306-A. The provisions of this Article were different from the items as discussed between Nehru and Sheikh. The provisions drafted by Ayyangar envisaged the applicability of citizenship, fundamental rights and Directive Principles of Indian Constitution to J&K state whereas the applicability of such like matters had earlier been left to the Constituent Assembly of J&K state to decide. Sheikh refused to accept it. On 12 October 1949, Abdullah communicated to Ayyangar the decision of the working committee of National Conference i.e. its refusal to accept the provisions as contained in Article 306-A. Abdullah sent an alternative draft to Ayyangar, which stipulated the application of only such provisions of constitution of India to the state, as corresponded to the stipulations of the Instrument of Accession. From the detailed correspondence between Sheikh to Nehru, on one hand, and Sheikh to Ayyangar on other it is difficult to understand that when Accession of J&K to India was limited for only three subjects i.e. Defence, Foreign Affairs and Communication what extraneous Indian con-

siderations were there to legislate beyond these subjects? The revised draft of Article 306-A prepared by Ayyangar was circulated in the Constituent Assembly on 16 October 1949 and was passed by the Constituent Assembly. Sheikh Abdullah objected it and wrote a rejoinder to Ayyangar asking him to reconsider the decision of Constituent Assembly, otherwise threatened to resign along with his other members. This draft Article 306-A was renumbered as Article 370 of the Constitution of India. Karan Singh, Regent of J&K State, by his proclamation ordered that the relations between the state, and the Union of India be governed by the Constitution of India, which incorporated the special Article 370.

HISTORICAL SIGNIFICANCE

The events leading to the passing of this Article show more of its historical than legal basis. The long and tortuous path which led to the passing of this Article speaks lot of expressions of independence of J&K people at its every stage. The assertion of independence of J&K leadership vis-à-vis Indian leadership, for which they did not allow Indian government to go beyond the provisions of Instrument of Accession, speaks of uniqueness which J&K state could maintain in those turbulent times. The legitimacy of Indian state to legislate beyond the subjects was circumscribed by the provisions of Instrument of Accession. That is why in one of the provisions of Article 370 it is clearly stated that President of India would be empowered to terminate or modify the operation of the Constitutional provisions with regard to the state on the recommendation of the Constituent Assembly of the State. Article 370 enshrines the struggle of freedom of J&K people against the autocratic rule of erstwhile feudal lords. J&K people wanted to preserve what was their own without being prejudice to others. It was due to Article 370 that land reforms in J&K were possible. The centuries old feudal oppression of Kashmiri people dissolved by just the stroke of this Article. P. Stobdan is not wrong when he states “

Kashmiris have not been victims of experiments, such as Russification and the Sinicisation of minorities in neighboring regions. Neither forced demographic transfer nor any ideological doc-

trines have ever been thrust on the Kashmiris. If this Article provided relief to the majority of J&K people by giving proprietary rights to the landless it also gave them a chance to build their own future as contained in “Naya Kashmir.” This Article helped preserved their culture from outside onslaughts. There were enough openings for the exploitation of J&K people by the emerging bourgeois-landlord nexus which came to rule free India. J&K being very weak economically and otherwise could have become looting ground of these emerging ruling classes had they not been contained by the provisions of this Article. No Article is that sacrosanct that it can effectively check the malpractices of every human sphere. Article 370 should be seen more as a historical category which embodies the centuries long struggle of its people. It has fulfilled its historical utility. This does not imply that now it is more a liability.

ABROGATION

The abrogation of this Article which is being demanded in certain political circles primarily have ideological undertones. These utterances are more of a communal nature than otherwise.; No political party or group(s) which are demanding its abrogation have given reasons on the basis of economic or cultural subjugation. The demand of devolution of power or Regional Autonomy is more by the Political elites of emerging socio-political groups. When these political elites do not get the share in power they start agitations invoking primordial identities. The demand for devolution of power is not for the empowerment of people but for empowerment of the political elite. Abrogation of Articles 370 at this juncture is replete with many dangers notwithstanding the present ongoing militancy in the State. Rather we should respect the autonomy of Kashmiri people. Being stayed with us for so many years, it has an emotive/psychological appeal also. Moreover, it cannot be abrogated without taking J&K people into confidence as Indian Constitution in Article 370 provides a clause where President of India has to take recommendations of J&K Assembly on this score. Being a historico-legal category Article 370 cannot be abrogated unilaterally.

Reference and notes

1. Menon V.P. Integration of India States. P-10
2. Ibid. P-60
3. As quoted by Hari Ram in special Status in India Federalism J&K, Delhi, 1983, P-39 from Sharma B.M and Chaudhry L.P, Federal Polity, New Delhi, 1967, P-129.
4. Hari Ram, Special Status in Indian Federalism J&K, Delhi 1983, P-182.
5. Mahajan M.C, Looking Back, Bombay, 1963, P-264.
6. Op. cit. P-201
7. According to Giden Gottlieb, there can be either Juridical or Territorial approaches solve national and ethnic problems, which he calls states - plus - nations. According to it i.e. states - plus - nations the central approach is, "deconstruction of sovereignty" into to the basic components - "sovereignty as power over people and sovereignty as power over people and sovereignty as power over territory." The first kind Gottlieb designates a "new space" in the international system. This new space he says, involves the conscious enlargement or "extension of the formal system of states to include alongside it a system of nations and peoples that are not organized territorially into independent states." This can be accomplished, he claims, without undermining the integrity of existing states. The international legal community can be broadened beyond states and international organizations, he asserts. As quoted by Wirsing G.Robert in India Pakistan and Kashmir dispute on Regional conflict and its resolution, Delhi, 1995 pp. 232-33.
- 7a Koul K.K., Political and Constitutional development in J&K, Delhi, 1984, P-166.
8. Gupta Kanchan, Kashmir in the U.N., Pioneer, Delhi, 25 Feb., 1994.
9. Bazaz P.N., Kashmir in Crucible, P-31.
10. Teng M.K., Kashmir in Article 370, 1992, New Delhi P-63.
11. Pakistan wanted to have a Muslim majority Kashmir which the popular leadership of J&K had refused to accept it. Seemingly other Indian strategic designs and considerations could be there.
 - i) The legitimacy of having J&K being one of its part on the basis of its past history and culture. ii) Other aspect of it was that Indian government wanted to prove its secularism by having a Muslim majority area thus shaking the very foundations of Two Nation Theory. It was also felt by Indian leadership of that time that independent Kashmir will be a hot bed of international intrigues i.e. of Imperialist powers. On the

other side Anglo-American blocks wanted Kashmir either to join a weak Pakistan or an independent Kashmir where this block could have kits unstinted sway and political military hegemony so that it could contain the onward march of Red China in addition to its other strategic interests.

- 11a. Bose A.C, Kashmiri Muslims and India, un-published seminar paper held in Jammu University in July 1995, states that for all practical purposes, Kashmiri muslims remained till recent years a self-contained community almost unknown and ignored. He further emphasizes that except in case of British Empire Kashmir had little to do with rest of India, either in the past or in the present. Pp. 2-3.
12. Teng M.K, op. cit. p.74.
13. Koul R.K, op. cit. p.195; also Teng M.K, op. cit. p. 73.
14. Stobdan p., Kashmir not a case of Islamic uprising, Time of India, Delhi, 14 Sept. 1994.
15. Kumar Ravinder, Anguish of Kashmiries an Agenda for countering Alienation, Times of India, Delhi, 30 April, 1992.
16. Das Gupta Swapa Das, political Liability of Article 370, Times of India, Delhi, 19 March, 1991 Das Gupta main grouse for the abrogation of Article 370 is the loss of Kashmiriyat which has been taken over by Islamic variant. Perhaps he is not familiar with ground realities in Kashmir that majority of Kashmiri Muslims have always been for some sort of independence rather than merger with Pakistan. Notwithstanding the armed militancy of Hizbul-Mujahidin, JKLF remains a popular front.

Chapter- 4

KASHMIRIYAT - THE CHANGING CONCEPT

*Culture is not a static phenomenon;
it is in dialectical relationship with mode and relation of production.*

The history of secession is replete with the indigenous movements by ethnic minorities to have their own homeland where majority's xenophobia doesn't trample upon them. These movements often took the shape of armed conflict with the State whenever ruling classes refused to accede to their (minority's) democratic demands.

Though the concept of right of nations for self determination presupposes economic subjugation it also takes into its ambit the political and cultural aspects of minorities which always feel the danger of assimilation into larger cultural milieu of the majority.

In recent times, India has had been a fertile ground for minority's revolts, lately being in Assam, Punjab and Kashmir. The case of Kashmir is peculiar in nature and is the subject of discussion within the purview of self-determination.

HISTORY

In the beginning of 14th century the population of J&K was Hindu. But through the efforts of Shah-I-Hamdan coupled with violent bigotry and persecution by King Sikandar, starting from middle of 14th century to the end of 14th C, according to one account

only eleven Hindu families remained in Kashmir. Though Kashmir was ruled successively by Muslims followed by Sikhs and Dogras, the people in general remained under the yoke of feudalism.

The movement in Kashmir before 1947 was anti-Maharaja.

It had nothing common with Indian freedom movement i.e. it was not anti-British. Even after 1947, with the change of political power, the majority population never became a part of Indian national mainstream due to draft Article 306(a). This restriction immobilized Kashmir and other people living in various states of India in terms of settlement and mutually sharing of their cultural ethos. This insulation resulted in non-nationalistic feelings in them. With change of political set up in 1947, Sheikh Abdullah assumed power in J&K. In 1953 he was summarily dismissed on account of his being persona non grata in the eyes of Indian political elite of that time. Installation of successive governments at the behest of Indian ruling classes combined with the political opportunism of indigenous Kashmir leadership, especially of Sheikh Mohd Abdullah in 1975 when he joined hands with Indira Gandhi, who enabled him to come out of his political hibernation, caused mistrust in Kashmiri minds. This alienation further intensified when duly elected government of Farooq Abdullah was dismissed and in his place the puppet G.M. Shah was installed as Chief Minister. The coalition of National Conference - Congress with mass rigging against 'Muslim United Front' in Kashmir proved the last nail in the coffin of parliamentary democracy in J&K.

The early communalism of Praja Parishad and Jana Sangh combined with the crudity of aggressive nationalism of various political hues asking every Kashmiri Muslim to prove his/her Indian credential had a demoralizing experience for the Kashmiri Muslims. The two Indo-Pak wars of 1965 and 1971 were taken as excuses by Indian govt. regarding the redundancy of U.N.O. resolutions on Kashmir. The agreement that Kashmiri people will be asked for their choice to settle wherever they want has since been driven to the back pages of history.

Socio-Geographical Setting:

The present upheaval is confined to a major section of Kashmiri Muslims. Kashmiri Pandits and Kashmiri Sikhs are no part of it.

Ladakh comprises of two districts; Leh is predominantly Buddhist and in Kargil Shias have much common with fundamentalism of Iran's Ayatollahs than anything else. In Jammu province 60% are Hindus and 40% are Muslims. In districts like Doda, Rajouri and Poonch (all in Jammu province) the Muslims have nothing common culturally with Kashmiri Muslims except common religion. A substantial section of Muslims comprising about 8 lakhs, called Gujjar and Bakerwals, have their own social codes. Being apolitical, they are not concerned about Kashmiri's struggle.

Self Determination

The right of nations for self-determination presupposes three distinct features like economic, cultural and political exploitation of minority by Majority. In Kashmir one does not find any economic exploitation of minority (if it is considered Kashmiri Muslims) by any majority community (if it is considered Indian Hindus) (Kindly see table-I). Average Kashmiri is relatively better as compared to his compatriots living in other states of India. Culturally, there is a full freedom to propagate religion. Linguistically, Kashmiri Indigenous leadership adopted Urdu as an official language in addition to English. Politically, J&K is as exploited as any other state of India. Rigging of elections, with various degrees, are part of Indian electoral process.

The present militant struggle is being fought on two different political-ideological approaches, Viz. I) by Jamait -I-Islami with its main militant outfit, Hizb-I-Mujahideen asking for straightway merger with Pakistan and

II) JKLF asking for self determination in terms of independent Kashmir comprising three portions of J&K i.e. one presently occupied by Pakistan and China and the other forming part of India i.e. on cultural basis which it calls Kashmiriyat.

In the former case, the assumption is that being a Muslim ma-

majority state it should have gone to Pakistan in 1947 but due to leadership betrayal, both of India and of Kashmir, this problem is a legacy of partition which should be rectified.

The later case, suggests its struggle in terms of separate cultural identity of Kashmiri people which it calls *Kashmiriyat* and believes that only through secession i.e. having separate State, the problem of Kashmiri nationalism will be resolved.

The idea of Muslim as a nation:

Religious nationalism defines the nation in terms of shared religion, usually along with other factors such as culture, ethnicity, and language. If the state derives political legitimacy from adherence to religious doctrines, then it is more of a theocracy than a nation-state. Many ethnic and cultural nationalisms include religious aspects, but as a marker of group identity, rather than the intrinsic motivation for nationalist claims. Irish nationalism is associated with Roman Catholicism, and most Irish nationalist leaders of the last 100 years were Catholic, although many of the early (18th century) nationalists were Protestant. Irish nationalism does not itself derive from Roman Catholic theological doctrines, although some Protestants in Northern Ireland do fear that these doctrines would be forced on them in a united Ireland. Similarly, although Religious Zionism exists and influences many, the mainstream of Zionism is more secular in nature, and based on culture and Jewish ethnicity. Since the partition of British India, Indian nationalism has often been associated with Hinduism, although there is also a secular and anti-communalist version. In modern India, a contemporary form of Hindu nationalism, or *Hindutva* has been prominent among many followers of the Bharatiya Janata Party and Rashtriya Swayamsevak Sangh. Religious nationalism characterized by communal adherence to Eastern Orthodoxy and national Orthodox Churches is still prevalent in many states of Eastern Europe and in the Russian Federation.

The idea that Muslims having by having Islam as a common religion can live peacefully and progress evenly and equally among themselves is false. The case of Pakistan which was carved under

the same presumption in 1947 now is a classical case of ethnic warfare, among its different cultural communities. First Bengali Muslims fought a bitter war against the domination of Central Forces represented by Punjabi Muslims and were successful in having their own homeland now the mutual fight between Punjabi Muslims Vs. Muhajirs (Urdu speaking) Muslims who migrated from India in 1947, Punjabi Muslims Vs. Sindi Muslims, Punjabi Muslims Vs. Pathans testifies that religion cannot act as a binding force. Had it been so then all the Arabs states, Muslim States of erstwhile USSR and Afghanistan should have one Central, Political and Administrative authority. But the mutual bickering even to the extent of complete annihilation of States like Iran-Iraq war and recently Iraq's usurpation of Kuwait would act as an eye opener to all the propagandist of Islam and *Islamiyat*.

Let us peep into history how the idea of Pakistan i.e. a nation-state exclusive for Muslims came into being. In undivided India there were few states which were ruled by centrifugal forces especially in the United Provinces on the basis of separate electorate. Jinnah after having "burnt" his fingers as a Congressman wanted to have a separate state exclusive for Muslims. According to his reading of history as Muslims belong to a different civilization so they constitute a separate nation and by this logic they should have a separate homeland. Moreover, in a predominant independent Hindu state Muslims will be second class citizen. The class interest of other Muslim rulers were in contradiction to what Jinnah proposed i.e. common interest of all Muslims by having their own homeland irrespective of their class character. But as the regional Muslim ruling classes started disintegrating Jinnah emerged as a mass Muslim leader championing Pakistan. According to Yunas Samad¹ the rise of mass Muslim nationalism was not a unilinear triumph but a complex process marked by deep inner contradictions. According to Samad, there was no uniformity in the way the Muslim League was transformed into a mass party in the Muslim-majority provinces. The provinces witnessed a complex and difficult struggle involving regionally oriented forces, local interests, ethnicity and community-consciousness. Its nature and emphasis varied from prov-

ince to province, being determined over a period of time, by shifting local circumstances. The elements of consistency which emerge are that the centrifugal elements in the Muslim majority provinces resisted the centripetal impulses of the League high command, and the local pulls were present in varying strength depending on the province, despite the upsurge in Muslim nationalism, asserts Samad². But on the very eve of Pakistan's independence while addressing his nation he talked of liberalism and secularism and equality of everyone before law just to allay any fear of the minorities who were witness to the bloodshed in the aftermath of partition. He well understood the divided Muslim politics before partition. If major Muslim identity as an religious construct was successful in bringing about a separate homeland now the other cultural identities (of Muslims on the basis of language and customs) were going to manifest and in itself contained great danger in breaking the newly independent Pakistan. Jinnah said his 'historic' mission has been fulfilled and now the independent Pakistan is a secular country and so Muslims have no exclusive rights over other minorities. So the father of Pakistan nation now wanted to build new Pakistan not on religious bigotry but on pluralism i.e. on modern democratic lines.

Hizb-ul-Mujahadin Islamic orthodoxy goes against the very grain of post independent Pakistan's father of nation's plurality. Hizb militancy against Indian state that they want to go to Pakistan, being having common bondage with the Muslims of Pakistan ironically proves that one type of Muslims are better than another type of Muslims i.e. the Kashmiri Muslims find more closeness and affinity with Pakistan's Muslims than with Indian Muslims. The political proposition of Hizb-ul-Mujahadin goes against the very character and bonafides of Indian Muslims who opted to live in free India after 1947 than to join hordes of Muslims who opted for Pakistan.

The sheer exploitation in all Muslim States is the answers that naked exploitation by the resourceful to the resourceless does not vanish with the coming of Islam as a State Policy. Puritan may argue that what we see in Islamic States are distortion and degeneration of its rulers who simply exploit the name of religion. Hence to play with the emotions of masses in the name of religion and to

ask people to rise in revolt against the "Infidels" is simply a ploy of reactionaries which must be opposed by all secular and democratic forces. It should not be forgotten in today's world only two states were carved on the name of religion. One was Pakistan and the other was the Jewish state of Israel and both are trouble shooters. Pakistan is in some sort of a civil war with its own co-religionists and Israel is hell bent upon to completely exterminate Palestinian people.

Nationalism, Sub Nationalism and Ethnicity- Its relevance to Kashmir:

Ethnicity is described in terms of a relationship between historical structure, human experience and social consciousness.

Ethnic nationalism is a form of nationalism wherein the "nation" is defined in terms of ethnicity. Whatever specific ethnicity is involved, ethnic nationalism always includes some element of descent from previous generations. It also includes ideas of a culture shared between members of the group, and with their ancestors, and usually a shared language.

Whereas a purely cultural definition of "the nation" allows people to become members of a nation by cultural assimilation, and a purely linguistic definition seeing "the nation" as all speakers of a specific language would make all those who learned the language members of the nation, the emphasis in the definition of nations (among nationalist movements) since the 19th century has shifted from language, culture, and folklore to a basis in ethnic origin.

The theorist Anthony D. Smith uses the term 'ethnic nationalism' for non-Western concepts of nationalism as opposed to Western views of a nation defined by its geographical territory. Ethnic nationalism is now the dominant form of nationalism in the world, and is often referred to simply as 'nationalism'.

The central political tenet of ethnic nationalism is that each ethnic group on earth is entitled to self-determination. The outcome of this right to self-determination may vary, from calls for self-regulated administrative bodies within an already-established society,

to an autonomous entity separate from that society, to a sovereign state removed from that society. In international relations, it also leads to policies and movements for irredentism – to claim a common nation based upon ethnicity.

Membership of an ethnically-defined nation is hereditary. A nation-state for the ethnic group derives political legitimacy from its status as homeland of that ethnic group, from its protective function against colonization, persecution or racism, and from its claim to facilitate the shared cultural and social life, which may not have been possible under the ethnic group's previous status as an ethnic minority.

So in the above stated criteria of nation/ethnicity, Kashmir does not fit into it, more so the struggle of JKLF.

The present struggle of JKLF for Azadi in Kashmir is stated to be because of KASHMIRIYAT (an identity) being in danger, as propounded by its Chief proponent Jammu and Kashmir Liberation Front. The proponents of cultural identity, i.e. Kashmiriyat lacks ground reality. Kashmir has various identities like Kashmiri Muslims, Kashmiri Pandits, Kashmiri Sikhs, Gujjar and Bakerwals. Among the Kashmiri Muslims there are sub-identities like Sunny Muslims, Shia Muslims and Ahmediyas. When as a cultural marker i.e. what is called Kashmiriyat has so many adherents in terms of communities then whose Kashmiriyat is in danger? Even among Kashmiri Muslims a sizeable section of Kashmiri Muslims find allegiance with Pakistan on the basis of Islam thereby negating their own so called Kashmiriyat. Can JKLF claim that before starting armed struggle it consulted every other Kashmiri community, who were part of Kashmiriyat, and they all agreed to its agenda i.e. to have an independent state? are sincere then why the struggle of JKLF in terms of mass-upheaval and armed militancy should also have been in Pak-occupied Kashmir where JKLF is headquartered today.

It would have been good politically had JKLF started the mass movement and armed militancy from both parts of Kashmir simultaneously. This tactics of JKLF starting mass movement and armed

militancy in Indian part of Kashmir taking India as a sole aggressor and exploiter of Kashmiriyat and not starting the same armed militancy and mass movement in Pak occupied Kashmir taking it as if a defender of Kashmiriyat proves its political duplicity and opportunism which is simply a cloak in the garb of Islamic fundamentalism. When Kashmiri Pandits, (original inhabitants of Kashmir), Kashmiri Sikhs who comprise about 40,000. Ladakhi Buddhists, Shias of Kargil (having more in common with Ayatollahs of Iran), Gujjar and Bakerwals, Muslims of Jammu province (of District Doda, Rajouri and Poonch) Jammu Dogras and Jammu Muslims are no part of Kashmiriyat, then whose Kashmiriyat is in danger? Is this Kashmiriyat only confined to a section of Kashmiri Muslims only as other sections of Kashmiri Muslims like to be with Pakistan? What about Ladakhi Buddhists, Kashmiri Pandits, Kashmiri Sikhs, Gujjar and Bakerwals and Jammu Dogras who like to be part of India and do not need any type of AZADI?

When it is a question of whole of J&K and the demand of JKLF is ethnic based then what will happen to ethnic demands of Jammu Dogras who want separate state of Jammu, of Ladakhi Buddhists whose demand is UNION TERRITORY, of Gujjar and Bakerwals who are apolitical and are considered Indian informers by Kashmiri Militant groups? If Kashmiri Muslims want their own homeland then what about the homeland of Dogras, Kashmiri Pandits, Sikhs, Ladakhi Buddhists and other sub-nationalities? Will not the sub nationalities of all these communities like Dogras, Kashmiri Pandits, Sikhs, Buddhists, Gujjars and Bakerwals etc. be submerged when Kashmiri Muslims will have their won homeland based on their own ethnicity? If the ethnic problems of any nationality could have solved by having their own homeland simultaneously satisfying the ethnic problems of other sub and sub-sub nationalities, the right of nations for self-determination could have acted as a good political principle. But it is not so as far as Kashmir is concerned, as after 1947 the population of Kashmir Pandits which was 9% have not been reduced to 1% whereas in Pakistan where Hindu population was 30% in 1947 has reduced to 1%, at present.

It is irony of history that whereas Dogras, Kashmiri Pandits

and Ladakhis, who have been reduced to minority in all sphere of activity, whether political or economic, should have asked for Azadi, it is other way round. The tables given below highlight the pattern of developments, political and economical in the three regions of state i.e. Jammu, Kashmir and Ladakh.

Table - I : Political (Since 1947)

	Region	Community
1. All Ministers	Chief Kashmir (present C.M is an exception)	Muslim

2. Presidents of All Political parties from Jammu. Except one Muslims such NC/Congress/ Congress(I) and Janta Dal.

Table - II : Economic

Total secretaries and Commissioner	Kashmir	15
	Jammu	5
Employees in Secretariat	Kashmir	90%
	Jammu	10%
Employees in Kashmir Division	Muslims	98%
	Hindus	2%
Employees in Jammu Division	Muslims	40%
	Hindus	60%

In addition to above the representation of Kashmiri Muslim community in other sectors of economy like agriculture, Industry, trade and transport is more than 90%.

The total employment of majority community in Kashmir accounts for 20.0 lacs of Muslims on 4, 30,000 holdings under orchard. In handloom and handicraft industry providing employment to 10600 and 91900 persons in Kashmir Valley whereas it engages only 5500/- and 6050/- persons in Jammu province (census figures of 1978-79).

The manpower deployment in Boat Industry in Kashmir is indicated in Table-III below. This industry is fully controlled and owned by Muslim community and its employment is only of that community as well.

Table - III : Boat Industry

Particulars	No. of Boats	Persons employed:
1. Passenger Boat	1152	2304
2. House Boats	825	3300
3. Fishing Boats	480	960
4. Luggage Boats	685	1030
5. Passenger "Dongas"	275	825
6. Taxi Shikaras	785	1570
Total:-		9906

Table - IV : Population Religion wise (Census 1981)

Religion	Hindu	Muslim	Sikhs	Buddhists	Jain	Christian	Total
Jammu	1802832	804637	100164	1141	1514	7778	2718066
Kashmir	124078	2976932	33117	189	62	466	3134904
Ladakh	5338	61882	334	68376	0	237	134367
Total:-	1932248	3843451	133615	69706	1576	8481	5987337

Table - VI : Developmental Statistics

Particulars	Kashmir Divn.	Jammu Divn.	Ladakh Divn.
Total No. of villages	2899	3617	242
Total agricultural land in thousand hec.	368.85	570.97	35.23
Net Irrigated land (in 000 Hect.)	270.28	89.06	18.6
Total forest area (in sq. kms)	876.62	12166.04	11.30
Rural Electrification (vill. Electrified)	2748 Nos.	2968 Nos	92 Nos.
Percentage of vill. Electrified	94.79	82.05	38.01
No. of vill. Covered under P.H.E.	2105	1987	88
%age of villages covered	72.61	54.93	36.3
Total Roads length in Kms.	5295	3820	1131

(Source : Planning and Development, J&K Government Digest of Statistics, 1985-86).

Table - VIII Province wise deposits and Advances
(Rs. In lacs)

Region	Total Deposits	Total Adv.	Advance Deposits Ratio
Kashmir	43157	22778	0.52878
Jammu	36761	11156	0.30
Ladakh	1370	190	0.12

(The above figures have been taken prior to 1990 i.e. before the onset of militancy, only to give a rough Idea that economic deprivation/non development are not the causes of militancy).

(These economic indices clearly shows in whose favour things have moved since 1947.)

Now the question arises, if there is no political economic and cultural problems of Kashmiri Muslims then why there is so much bitterness and alienation which has resulted in mass upheaval specially in the beginning i.e. the early part of 1990.

CONCLUSION

The problem of Kashmir predates to 1947. Kashmiri people were never a part of Indian freedom movement. Their struggle was anti-Maharaja, a symbol of feudalism. After 1947, they were protected and remained insulated from whole Indian, political and economic culture due to article 370. If article 370 has served them in certain ways it had its economic, cultural and social fall out also. We have earlier tried to show how Article 370 came into being and some economic benefits trickled down to Kashmiri people in addition to preserving their separate identity. But autonomy has its own advantages and its share of disadvantages also. As other patriotic, nationalistic, crosscurrents were missing, a sense of rootlessness was there since 1947. They grew in vacuum getting fed on the catchy slogans of leaders suiting to their own (these leaders) political ends. They found some succour in Islam. As during partition many families migrated to Pakistan or remained in that part of Kashmir presently in Pakistan the filial i.e. family affinities had their psychological bearings on them. British partition formula; creation of Pakistan on Muslim identity; Sheikh refusal to be a part of two-nation theory; on implementation of Security Council resolutions and finally Sheikh's dismissal had a great catharsis on Kashmiri mind.

Kashmiri & Other Muslims in J&K are the historical victims of its own indigenous Kashmiri & Indian leaderships.

He was simply used as a pawn in the chess board of politics and is till being used. Otherwise, the peace loving & secular Mus-

lims who never touched his/her other counterparts during communal frenzies taking place in other states of India now have wielded guns and want to settle their scores whosoever opposes them. This psychology of alienation though lacks material roots, is a combination of causes. When in 1947 Muslims had their homelands in Pakistan they were not allowed to be part of it. After 1947, they were not allowed to determine their fate as stipulated in U.N.O. resolutions. With the political jugglery and the opportunism of their own leaders helped shaped their minds. All this gave them a sense of idea as if they belonged to a community different from others. Being of a different community they nurtured a consciousness albeit a false one i.e. of Kashmiriyat.

False Consciousness:

Let us briefly understand what false consciousness is. Germany was facing a great humiliation after being defeated in First world war due to unequal treaty of Versailles. The country was passing through many vicissitudes and there was no centralizing authority who could save Germany from disintegration. Germany was passing through making and breaking of coalition governments. German people were in search of a new Bismarck who can once again make Germany strong and united. Hitler came on the historical scene and he gave a new name and philosophy to the German people called Aryan race born to rule and not to be subdued. German people responded in hordes to Hitler's call. This inculcation of consciousness in German's mind was a false one, though people responded to it not due to any intrinsic quality of Aryan race but to historical reasons.

We have described the present militancy, as being carried out broadly by two political approaches (though there are numerous groups and militant organizations), i.e. one for straight merger of J&K with Pakistan (on the basis of two-nation theory), and other for an independent state of J&K on the basis of separate and distinct culture called by its proponent as 'Kashmiriyat' as false one. The first approach wants the historical 'legacy' to be rectified mechanically ignoring the rise of consciousness of other non Muslim com-

munities since 1947 i.e. the political forces belonging to first category have no use of time and space as if both these are static and immutable categories. For them time has frozen since 1947. Since the religious arithmetic is in their favour they refuse to acknowledge the 'sub-nationalism' of other communities. As the rise of consciousness, based upon ethnicity, regionalism or ethno-nationalism is the prime factor in deciding the political disputes for the people living in the same territories for centuries together, the majoritarianism (in the present case Muslims) can not be accepted the sole category in solving the Kashmir problem. If Kashmiri Muslim nationalism is a separate category of a nation then sub nationalism based upon regionalism or ethnicity can have equal recourse to separate territory where these regionalists and ethno-nationalists are their own masters as they presently perceive themselves as being exploited by the majority i.e. Kashmiri Muslims.

References:

1. A Nation in Turmoil, Yunas Samad, Sage, 1995.
2. ibid.

Chapter – 5

IDENTITARIANS, HEGEMONIC STRUCTURES AND ALIENATION: ETHNIC ACTIVISM AND SEPARATISM IN KASHMIR

Man has many identities i.e. identities are contextual. The supermost being Humanism and Brotherhood.

Ethnic political movements are not uncommon in the world history. These movements often took the shape of armed conflict with the state whenever ruling classes refused to accede to their democratic demands. In recent times, India has had been a fertile ground for such ethnic movements lately in Assam, Punjab and Kashmir. The case of Kashmir is peculiar in nature and is the subject of discussion within the purview of ethnic activism and separatism¹. Exceptions apart these movements are hardly ever directed against feudal and semi-feudal forces nor against imperialist domination². The middle class educated youth alienated and betrayed by their own leaderships and the recent emergence of the rich peasantry heavily dependent on the state subsidy and being denied a share in political power, mobilize the masses on ethnic lines for their own advantage. Structurally speaking, the militancy in Punjab was the struggle of two contending economies i.e. between capitalist farmers and local industrial bourgeoisie. But the class consciousness there remained latent resulting in manifest national and ethnic consciousness. Kashmir problem is a legacy of partition based upon the "two nation theory" i.e., Muslim is a separate nationality. But due to unequal distribution of land in the name of land reforms a class of

rural kulaks emerged in rural areas which was denied their demanded political share. As number of power-centres emerged in Kashmir so the struggle among these contending power centres gave rise to a political party, assimilating rural-religious interests, namely, Muslim United Front. Here also the class consciousness remained latent ethno-religious forces being manifest.

In terms of the manifest ethno-religious consciousness also the movements of north eastern states and Punjab, though appears to be similar, are in some ways different from Kashmir. Though external support was / is available to all the them, the cultural proximity of Kashmir and its ethno-religiously charged Muslim population is the main point of difference from that of Chinese supported north-eastern states movements and Pakistan backed movement of Punjab. This cultural proximity makes the Kashmir issue a complex one. Solution to the problem needs to be searched in the framework of class.

Sociologists, for long, had assumed that ethnicity would disappear with modernization and industrialization that intimate community would give way to impersonal society. The melting pot theories of assimilation thrived within this epistemological foundation³. Even the Marxists have assumed that ethnicity is a mere by-product of cleavages in the control of production and these cleavages will give way to greater proletarian brotherhood. Marx and Engels thought of "national difference and antagonisms between peoples are daily more and more vanishing", and that "the supremacy of the proletariat will cause them to vanish faster"⁴. Lenin also believed that with the economic development, ethnic resistance to assimilation tended to disappear and ethnic question might survive only as vestiges⁵.

Contrary to the expectations, ethnic activism and separatism has surfaced in a big way in the post colonial societies. Within the neo-Marxist framework, however, it is argued that development of capitalism produces the conditions for the rise of ethnic self-consciousness⁶. It is also located that ethnicity is an integral part of the uneven development of capitalism and it is due to the policy of the

bourgeoisie to divide the working masses so as to procure a lease of life for the moribund system⁷. Struggle for identities both in backward and advanced states is due to modernization and post-modernization. ETHNIC PROCESS HAS TO BE VIEWED, THEREFORE, AS CLASS PRACTICES ARTICULATING NEW DEFINITIONS OF A REALITY SO AS TO SEEK NEW IDENTITIES AS POWER GROUPS. Mukherjee⁸ has viewed class and ethnicity in a three dimensional frame of reference, i.e. class consciousness is latent resulting in manifest national and ethnic consciousness and when the class in itself manifest leading to latent nation-in-itself. This possibly could explain the ethnic conflicts having taken many shapes and forms⁹. Contrary to the expectations of the 'evolutionists' that ethnicity is destined to wither and yield to genuine democratic and socialist forms, it is taking new forms with changing systems as it serves and basic communal affective bonds today.

One of the most popular cultural perspectives with reference to ethnic minorities is cultural pluralism i.e., there ought to be willingness on the part of the dominant group to permit cultural differences. This only can provide true meaning of national identity in multi-ethnic societies through decentralization. The perspective, however, ignores specific character of the national society and the unequal relations between parts and the whole. Making ethnic distinctions as an end in itself accentuates self-isolation. Ignoring other cultures is to impoverish that group and portray it differently from what it is in reality¹⁰.

The nature of practices of cultural pluralism in Jammu and Kashmir historically accentuated self-isolation and segregation. A closer look into the present problem in Kashmir through the following facts proves the point further.

MAJORITY-MINORITY DILEMMA:

Like the Sikhs constitute a majority in Punjab and Christians in Nagaland, Meghalaya and Mizoram, the Muslims form a majority in Jammu and Kashmir (67%), Laccadive, Minicoy and Aminidive group of Islands, but nonetheless they constitute minorities in the country as a whole. It results in a demand to get the benefit of the

minority share of resources and at the same time demands political power within the regional boundary. The highest political office of the state is always cornered by a member of this majority in the state and minority in the country community.

Further, the three different regions of the state are inhabited by different people. The Kashmir Valley has the concentration of the majority in the state and minority in the country community and all the recruitments to different highest offices are being cornered by the members of the same community.

The second postulate is that cultural pluralism inevitably leads to crystallization of ethnic identities and thus inimical to national interests & hence the suggested remedy is assimilation. There are three theoretical perspectives of assimilation. The consensus model of integration conceives that through the process of modernization and development, the segmentary tradition of the past get replaced gradually. The consociational model implies a basic agreement among ethnic divisions on Parliamentary procedure and strong elites, who are engaged in 'negotiation politics' and capable of the compromises on their constituent groups. The third perspective of control believes in effective domination of one group over another through political coercion.

CONSOCIATION VS COERCION:

The struggle for identities both by backward and advanced societies is due to modernization with its associated vulgar consumerism and wastefulness on one hand and poverty, hunger, unemployment and disease on the other. Further uneven development of capitalism has accentuated regional disparities and division tendencies. So integration, as conceived by the consensus model, through modernization and development has not been possible in the case under review. The people of Kashmir today are in a dilemma between consociation and coercion.

In Jammu and Kashmir, before and after accession the search by the Valley ethnic Muslim group for "responsible government" found Sheikh Abdullah to champion the causes of the oppressed

Kashmiri Muslims. He gained strength and his party (Muslim Conference, later known as National Conference) development into a living and vibrant symbol of Kashmir's will to freedom and independence from the feudal rule. The centre's attempt after independence, to assimilate the valley Muslim ethnic population by accommodating their dominant classes and the strong elites into the near proportionate class positions of the nation state with certain politico-economic concessions was temporary. The imprisonment of Sheikh Abdullah, a popular and elected leader, in August, 1953 "was received by the people with hostile demonstrations on an unprecedented scale"¹¹. This further aggravated the situation due to massive corruption in administration and Coercion in the elections of 1962 and 1967 which proved the futility of democratic participation of the people. The withdrawal of congress support to Sheikh Abdullah in 1977 even after reinstating him. In the office in 1975 and dismissal of Farooq Abdullah and so on proves the point further "Sheikh Abdullah's concern for political power, Bakshi's Lumpen style of working like bribing all those who mattered, Sadiq's bureaucratic tendencies. Foisting of leaders from above by Indian state with democracy not allowed to grow either by Sheikh, Bakshi and others were the political factors responsible for Kashmir Muslims alienation both from Indian state and its own old leadership. Cultural pluralism per se is not problematic for national integration, but since the cultures are rooted in history, economy, polity and social structure a holistic policy with regard to integration is important. In the name of National ideology and secularism they cannot be sacrificed before the culture of the dominating sections the Hindu upper castes of the Indo-Gangetic plains¹². The RSS and such like organization and those political parties supporting their advocacy and their demand to abrogate Article 370 in J&K state amounts to Coercion. "Article 370 is an historico - legal category and hence cannot be abrogated unilaterally'.

The new class of rural Kulaks¹³, which embodies the elements of semi-feudal and semi-capitalist relations as well, emerged due to malpractices in the land reform implementation. These rural Kulaks when not accommodated in political power made alliances with

rural educated youths, who were groomed in Madrasas (where Islamic education is imparted) formed a political federation called "Muslim united Front." The Front assumed the mantle of Islamic purity and orthodoxy distancing itself from India. It was successful in projecting itself from India. It was successful in projecting itself as a rival force viz-a-viz. NC/Congress otherwise involved in "negotiation-politics". Political groups seeking assimilation and national integration as a means to resolve ethnic conflict may often end up exacerbating the conflict rather than solving it. Even the secular and nationalistic forces, unwillingly contribute to the rise of ethnic conflicts in multi-ethnic societies. So also the modernization, democracy and universal adult-suffrage heighten the awareness of the disparities in the allocation of the systems rewards among competing groups, and these days ethnicity is viewed in relation to resource competition.

COMMUNAL- SECULAR DICHOTOMY:

During late 1920's, the Ahmediyas in Punjab propagated 'political literature through the All India Kashmiri Committee and were pro-Britishers. They opened schools where Islamic education used to be imparted and were quite influential among Kashmiri Muslims. Ahrar, an offshoot of Khilafat Movement, formed a political organization in Lahore on 19.12.1929, which was comprised of Lower middle class Muslims. Ideologically, they were anti-imperialists and believed in nationalism, secular democracy and representative institutions. Muslim Conference was born in 1931 and in 1939 it was converted as National Conference. The purpose was to broaden the activities of NC among all sections of people.

Muslim Conference was reviewed in 1941, Ch. Gulam Abbas as its President and in 1946, MC broke up with the expulsion in Mirwaiz. This clearly indicates the dichotomy between secular and communal leadership. The communalization of state politics started in 1984 where Muslims demanded mosque within secretariat premises and the Hindus demand for Tuesday as weekly holiday. Historically, Kashmiri Islam exclusively grew in local Kashmiri ethos; was different from Arable Islam. It was responsible for the secular-

ized socio-political structure of Kashmir till recently when orthodox Islam as nurtured by Jamait-i-Islami started influencing Kashmiri rural youth by indoctrinating Islamic purity through 'Madrasahs'. Presently, the Kashmir movement is non-secular. JKLF claims to be secular but finds no support among Kashmiri Pandits, Sikhs, Gujjars and Bakerwals, Ladakhis and Jammuities. Its main slogans are AZADI (from whom or for whom is not spelled properly), and NIZAM-E-MUSTAFA i.e., Rule of the pure on Islamic lines. The movement is undemocratic because it does not spell the nature of state power it likes to have in Independent Kashmir and role and place of other minorities and their safeguards both socially, religiously and politically. The content of the movement is, therefore, ethno-religious, instead of ethnic. Kashmiriyat which existed in the past remains to be shattered.

UNITY VS ALIENATION:

One of the basic parameters of any political movement is the capability of leadership to maintain unity among the different sections of the population. The leadership is, in itself, a divided one¹⁴. The JKLF (Jammu Kashmir Liberation Front) comprises lower middle class youth and some feudal elements. It is directly supported by Pakistan and other western secret agencies inimical to India. Secondly, Hizb is comprised of religious zealots belonging to clergy and rural feudal elements. It is directly supported by Pakistan, and by some rich Arab States. So Kashmir militancy, Instead of serving the cause of people's unity, divides the solidarity of working class, being based upon non-secular and undemocratic lines. It does not care a fig neither for industrial workers or agricultural peasants, poor fishermen, migrant labourers who visit various places in India for search of work during the winter.

STATE Terrorism VS PEOPLE'S Extremism:

The aggressive movement of Kashmir has been sufficiently countered by the State. In the process some irresponsible and un-mindful over-excited actions of the state machinery has only alienated the marginal men of the valley who are now caught between

state and militant action.

The militant leadership, though might have acceptable to the ethnic Muslim population in its initial stages, now has lost its credibility due to its anti-people approach largely dictated by the ISI of Pakistan. So state while performing its military functions must legitimize its action within the Constitutional provisions without giving any slight complaint to the average man. Human rights violation from either side worsens the situation.

INDO-PAK DILEMMA:

Kashmir being having geo-political importance especially after World War-II became a hunting ground for Anglo-American block. This they did in propping up the unresolved nationality issue of Kashmir. What they actually wanted was to create a buffer in Kashmir to contain the advancement of communism from the North. Their worries got further deepened after station's period when Khrushchev-Bulganin duo supported India's claim to Kashmir as being its inseparable part. India got bludgeoned in cold war of two superpower and so Pakistan. Pakistan had its claim on Kashmir being a part of two-nation theory which Kashmiri people had rejected when he visited Kashmir in 1946. With the generous support of Anglo-American block Pakistan willingly made itself and pawn of this block and instead of consolidating its democracy, strengthened the hand of landlords, new emerging bureaucracy and its army. The bureaucratic landlord - army apparatus best suited to the designed of Angle - American block. The emergence and consolidation of non-alignment as a neutral world organization emergence of Bangladesh as an independent state by the direct help of India and its perceived hegemonic designs especially to its tiny neighbors, were the new signals to the Anglo-American block for the containment and if possible balkanization¹⁵ of India for which India was a fertile ground¹⁶. So it is not surprising when we find dual role of Anglo-American block i.e., on one side supporting rabid dictatorships and on the other championing secularism and democracy.

Presently, Pakistan is in the struggle for consolidation of its democracy, and unless democracy gets consolidated there, Kash-

mir issue will remain in the priority list which-so-ever party comes in power. To achieve this, there is a need of bourgeois-democratic revolution in Pakistan and till that time Pakistan's democracy will remain fragile. So in India, instead of looking at Pakistan as our total enemy, rather should help the democratic forces there who are at war with waders and feudal-lords. This we will do not for the sake of Pakistan but for ourselves as consolidation of democracy in Pakistan will in turn lessen tension between us.

ELITES VS MASSES DILEMMA:

The authoritarian politics of the actual and potential ruling parties of India have subscribed to the ideology of unitary state. The identity groups and their struggle against domination ranges from the extreme demand from secession to autonomous regions. Even the autonomy demands were treated as a challenge to the Centre and as a response the ruling parties at the centre, up to 1989, centralized more and more powers. This trend of centralization generated alienation of regions and identity groups have now accelerated their autonomy demands¹⁷. The vicious circle process of centralization and alienation has in extreme cases resulted in activism and separatism.

The rise of secular nationalism in British India though relegated the ethnicity and plural identities to background, they were not dead and buried. After independence, all subdued forces surfaced in the political democracy of India and ethnic identity got whipped up and invariably all political parties have made compromises with ethnic demand. Even the process of development and change has generated ethnic conflict, as fruits of these development processes have come to be distributed unevenly.

In the state of Jammu and Kashmir, the "iron triangle" of the politicians, bureaucrats and business groups and its sharing of unaccounted money¹⁸ from India helped them to consolidate their respective positions in power which was further deepened by having matrimonial alliances among themselves. Political power remained entrenched in urban social groups. Unemployed, Lumpen elements on one side and average Kashmiri's disaffection with rul-

ing powers gave rise to tensions. Since the decided norms to distribute land among landless was not followed and most of land was cornered by influential people, a class of rural Kulaks emerged in countryside. The denial of political power to these "kulaks" made them to form alliance with rural educated youths on fundamental lines. The JKLF (Jammu Kashmir Liberation Front) mostly comprises of lower middle class youth. The general masses of Kashmir are a helpless victim of the political acrobatic of elites.

People's struggle in history has had given rise to political powers of various nature. These concentrated political make-up were due to collective labour of the people i.e., how people objectified their struggles. So the object which people produced i.e., people's product in shape of political power started confronting people immediately as something aliens, as a power independent of them. Peoples' realization of power is its objectification. But under capitalistic conditions this realization of power appears as a loss of realization for the people in general;

Objectification as a loss of political power and bondage to it, appropriation as estrangement, as alienation. This estrangement or alienation is due to non-empowerment of people and instead empowering either the leaders or political parties or elite groups. Political elite feeds the issues, both primordial and emotional, and channelised people's energy towards centrifugal tendencies. It is imagine to them that their dealienation is possible through objectifying their rising political elite. The support, peaceful or otherwise, which the people offer gets converted into empowering these elites. This can be seen when successive indigenous Kashmiri leadership, who spoke on their behalf, left them high and dry not fulfilling any of their just aspirations. Now, a new political elite, condemning all erstwhile leadership, is again feeding the concept of, equalitarian for all Kashmiris. But people through this phase of militancy have started realizing the motive forces, both regional and foreign, who are using them on the chessboard of politics for their personal ends.

Dealienation of the people of any nature whether of self, labour, nature or man to man is possible only by empowering people politi-

cally, economically, and culturally. The unequal relation in exploitative capitalist society is not the right political playground for dealienation - rather it is possible by abolishing it universally.

Instead of decentralization, autonomy and like which only empowers the political elite or political parties, it will be better if we dealienate the people i.e., by empowering the people themselves in general so that alienation of all types can be removed.

DEMOCRACY AND DOMINATION:

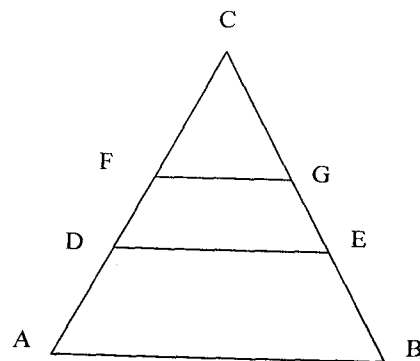
In the name of restoration of political processes the centre conducted the last election in J&K in 1987 which is alleged to be a tempered one. The search for "responsible government" was defeated in the past elections and it has become now difficult to rebuild the shattered confidence of the Kashmir people in democracy. Democracy is not to be imposed and the rhetoric of "restoration of political process" with the same structural set up again today speaks of domination.

The empowering of people can only be on the basis of "Participatory Democracy". It is not only "identity groups" who are alienated but the average Indian also whose democracy is limited upto casting of vote every five years.

PARTICIPATORY DEMOCRACY - A MODEL;

In what follows, an attempt has been made to sketch a brief outline of a model of 'participatory democracy' to empower people - not to political elites or parties. This has to be done at the grass-root level which in Indian case will be at the village level, oftenly called "Panchayati Raj". For us it does not mean holding of elections and choosing people for certain period of time. The main features of present political structure are:-

Present Political Structure: (Pyramidal)



AB - It stands for People,

DE - It stands for Party,

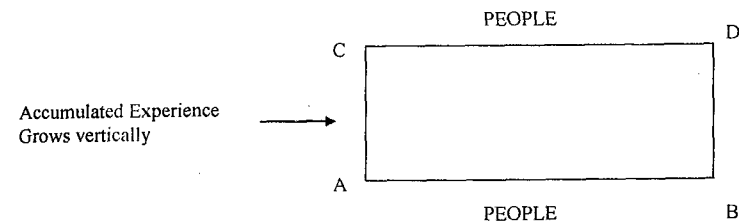
FG - It stands for Politburo/Cabinet,

C - It stands for Political Supremo.

In the above model, the base which represents people in general is getting shrunk as it moves upwards. The more it moves upward the more it shrinks, which shows that people are getting marginalized first by party, then by politbureau/cabinet and lastly by a few or a single individual whether charismatic or a political dictator. Here people's aspirations are taken care of first by party, then by politbureau/cabinet and then by political supreme. All these political institutions assert on behalf of people where people don't have any say. Hence people remain outside the domain of power structure and decision making bodies. Instead of empowering people, by which they can decide for themselves, it is the political bodies, in various names and structures, which decide for people. People remain marginalized, alienated and estranged from political structures of this type. Their struggles where so much blood and lives are sacrificed with the expectation that they will have something which they could say that it belongs to them, instead brought those forces in power who had promised them (by invoking all types of identities of nation, religion, region, culture, language, ethnicity

etc.) their unshackling of complete oppression of all kinds. This model both prevailing in left and right political structures, has failed especially in Afro-Asian states where parliamentary democracy or socialist democracy prevails.

Alternative Participatory Democracy Structure (Rectangular)



AB: It stands for people.

CD: Also stands for people.

AC/BD: It stands for ever-growing experience of people.

In this alternative model, people are basic unit and throughout their struggles they remain the basic unit. Here people devise/formulated their struggles on the basis of their accumulated experience in the passage of time. As time passes by their experience gets enriched both theory and practice-wise. The people of modern age are not primitive apes or a stupid ignorant and unlettered like of pre-capitalist formations. Their spontaneity i.e., their struggles have had been tested in the firm of revolutionary theory and practice from which they have drawn their present political lessons. The socioeconomic and political status of people is through the sustained struggles of centuries and hence their social mobility has a verticality i.e. an upward mobility based upon their accumulated experience.

The main advantages of this type of political model are :-

- 1) Here people fight themselves on the basis of their own deci-

sion arrived at collectively and share the benefits and losses collectively.

2) Here no one, whether party, politbureau/cabinet or supreme, rules on their behalf but they themselves are the rulers.

3) The dealienation of people from all types of alienation, (whether of labour, nature, self and man to man) can only be possible when the product of their labour i.e., the product in which their labour is objectified is their own, i.e., appropriation is possible. In this case the political power which has become possible through their struggles is the product objectifying their labour. If they can appropriate if themselves and not political elite of any type (party, trade union leadership, M.L.As and ministers) then there is a possibility of their dealienation i.e. by empowering people themselves.

4) This empowerment of people is possible through "Participatory Democracy" whose grasss-root organ is "Panchayati Raj" in India's case.

5) In 'Participatory Democracy', village is taken as the basic unit. The number of seats (suppose eight or ten seats) are to be equally shared by various classes and historically deprived castes i.e., among landless, local craftsmen, middle/rich peasants and S.C./S.T/other Backward Classes).

6) This regimentation facilitates equal growth of all classes/castes.

7) Here class and caste is coterminous.

8) At block/tehsil/district/state and central level this regimentation continues.

9) In this model, role of money, pressure groups and traditional ruling classes are checked substantially.

10) With the passage of time the distinction of class and caste vanishes and rich peasants and industrial bourgeoisie are checked.

11) As the underlying assumptions of this model is to check the landlordism and industrial bourgeoisie both politically and economically, by divesting political power through participatory de-

mocracy the new order will grow towards equalitarian relations among the various strata of people.

12) People's collectivity in the shape of participatory democracy will open the way from Administration of People to Administration of things.

13) This model being based upon People's Spontaneity hence does not recognize national boundaries, cultures and various political institutions of bourgeois and present spurious socialist order.

14) The model ultimately aims at solidarity of people of the world and hence universal in its aims and objectives, both politically and economically.

Regional autonomy¹⁹, statehood for three areas of Jammu and Kashmir²⁰, Federation or Confederation, Dixon Plan or Trieste Solution²¹ are not answers to the Kashmir problem. As in Afro-Asian states, parliamentary democracy has not given results, more so in India where latest surveys by NGOS indicate people's frustration both with politicians and political parties. The solving of regional, states or national problem of democracy can only be through People's Spontaneity, meaning what people what collectively through their accumulated experiences and not by any political party or parties or any organization, group(s) having elitist character which includes trade union leadership as well.

The masses of Kashmir, though time, are in a dialectical relation which the Indian State and at the same time live an alienated existence within the state. The elites have cornered and political power the product of masses and appropriate it for their own vested interest. In cultural sphere also, the policies have failed to come to grips with simultaneous process of interpenetration and preservation. The ongoing movement fails to satisfy the basic parameters of the understanding of a political movement i.e., leadership, rank and file, content, secular-democratic character, people's unity, and historical deprivation and oppression. In order to gain support, the movement should dealienate the masses and acquire a secular-democratic character.

The National Liberation Movement in the Indian periphery whose ethnic groups have been at one or other times coerced to remain in India may be justified but under prevailing conditions of domination of foreign capital and extreme weakness of Local bourgeoisie, the small minorities, if allowed to secede may more likely come under the domination of one or other super-powers, which would severely retard further, their historical development.

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Chapter – 6

Nationality Question In India - The case of Kashmir

Boundaries divide; both hearts and minds

The word "Nation" designating higher ruling classes in opposition to people was first used in Germany and France in the first century after Middle Ages. But the widespread modern usage identifies a nation with their people constituted as their state. Thus, there can be legal nationality, cultural nationality or political nationality. Territorial centralization is also necessary for social unification. If Ernest Renan believed that the national idea is founded upon a heroic past, greatmen and true glory; Arnold Toyanbee, though the rarely used the word 'Nationalism' rather calls it parochialism, defines it as "a spirit which make people feel and act and think about a past of any given society as though it were the whole of any given society as though it were the whole of that society"¹. Here Toyanbee refers to 'whole' as civilization. Psychologist Prof. William Macdougall describes the ideal type of a nation, which continues all the types of nationhood to a high degree and then class to each nation according to its approximation to this ideal². Max Weber has shown that the method of drawing an ideal type is a better way of investigating complicated social structure than the usual type of definitions³. G.Le. Bon, a theorist of mass psychology stresses upon

the fact of hypnotization of the masses by the leader and the suppression of intelligence and morality by mass emotions. The case of Adolf Hitler can be cited in this instance. For Freud, group sentiment in general is the product of libido⁴, the instinct of love in a wide sense focused on the leader. Political thinkers of nations have worked out the doctrine that a state was a spiritual organism, the result of historical growth and the embodiment of the experience of all ages. Montesquieu, Burke, Hegel, De Maistre, Royer Collard were some of the defenders of this thesis. They all rejected the view that the nation was merely the people living in a state and maintained that both the political institution of the State and the social instructions of the society had an organic structure⁵. For Disraeli, a civilized community is a nation. For him a nation is a work of art and work of time.

If some leader distinguished among the various concept of nations they also had their strong likes and dislikes even between nationality and nationalism. For Mazzini nationality was sacred and nationalism was narrow, wretched, usurping and so on. For monarchs and aristocrats individual work was sometimes more important than their nationality as in the case of Tsar Alexander II when he asked Bismarck, then Prussian ambassador in Russia, whether he would like to join Russian diplomatic service. For Martin Luther separation of State and Church left the settlement of all non-religious questions to the state, which resulted in the growth of cult of power and nationalism. Catholic church remained a supranational, a hierarchical system of authority independent of community. The Byzantine empire made extensive use of eunuchs in the highest positions even as leading ministers, generals and heads of churches. The noblest families had their men castrated to help their advancement. The underlying idea was that a eunuch was a more reliable servant of a state and the church as he could not found a family and had no interest in accommodating wealth or power for descendants⁶. But according to Stalin a nation is historic constituted community of people on the basis of common language, territory, economic life and psychologic make up manifested in a common culture⁷. Culture In Dialectical Relation with Relation of Production.

It is the relation of production which is responsible for different life styles of people, which in common parlance is called culture and is the basic factor for determining alliances among the people. Culture by itself does not mean anything if it is separated from class. In a single mode of production, at any historic stage, there can be different relations of production among various people engaged in the same profession or in a production process. For example, an Engineer or a Doctor or a Teacher will have different life styles depending upon the social surplus they derive through their individualized specialized skills. A worker engaged in a multinational firm can have same life style (which we call culture) with of a Engineer or a Doctor. It shows that the common life styles of people working in different fields or professions given rise to same values, which determine their culture. So the common life styles based upon the shared common values is the basis of the class and not culture by itself. By this derivation it can be assumed that culture does not have any autonomy of its own and is subject to constant variations in accordance with the class position of any individual. Hence the primacy of relation of production. To search nationality by saying that it is rooted in culture does not satisfy the class character of people. So language in combination with specific life styles based upon relation of production gave rise to what is called "culture of the People" in a specific territory what came to be known as community of cultures.

PRE BRITISH INDIA:

The Communities of cultures got consolidated with the rise of commercial capital. This social intercourse through commerce and trade in pre-capitalistic societies sharpened the cultural assertions of the people. The second aspect of cultural differentiation was the breaking up of cultural hegemony of Brahminical class by the newly emerging indigenous social spiritual leaders when they transformed the spiritual discourse from the exclusivity of the Brahmins to general laity. Though the content of their literature remained religious in orientation and assertion but its absorption directly by the general masses had a revolutionary effect. Whereas, in Europe commer-

cial capital took anti feudal stance during 16-18th centuries, Indian commercial capital could not transform itself into industrial capital due to the rigidity of the Verna caste social organizations, village community and joint family system property ownership⁸. So it was stagnant Indian social and economic system, as Marx put it, which was responsible for the failure of the merchant capital to convert itself into industrial capital which otherwise would have transformed the community of cultures into nationalities. Even the consolidation of Maratha rule under Shivaji was more a Rajput clanic nature than that of Maratha assertion.

BRITISH INDIA:

Moplas' Rebellion, Indigo revolt and 1857 rebellion were some of the historical episodes which helped in transformation of local nationalities to pan-Indian nationality. The Indian writers in their novels and short stories/poetry gave vent to the feelings of the oppressed masses asking them to unite and break the shackles of slavery of the foreign rulers. Bikram Chander's "Anand Math" and other nationalistic writings helped in inculcating the consciousness of one Indianess.

The requirement of British Imperialism and Indian people's struggles for their freedom were the twin factors responsible for rise of Indian nationality. The freedom movement of India was all pervasive encompassing all people and the common thread running and uniting all Indian people in a single pursuit was drawn from INDIAN CIVILIZATION. There are illustrations which prove the specificities of Indian civilization where racial stocks of different cultures or even languages may contend among each other but they are not sufficient to form separate nationalities. What we have in India are cultural communities like Tamilian, Punjabi, Kashmiri etc. and not separate nationalities because there was/is no major single nationality (being a ruling class) at all India level which supported and preferred its own nationality both in political economic and cultural terms and oppressed other small nationalities. No Marwari or Gujrati all India bourgeoisies preferred its own community or its own language to spread capitalism in India. The ruling classes

preferred three language formula as far as education and official correspondence was concerned, taking into account the cultural and linguistic diversity of Indian people. At a social level there is a cultural differentiation in form of dress, food habits, specific rituals/festivals and language etc. But culture as an economic category derives its strength and have an independent position only in relation to Relations of production.

The exploitation of Indian people on caste lines, though a worst form of exploitation, and admittedly a feature of Indian civilization, couldn't become a basis of a nationality. If consciousness of oppression based upon socio economic factor can become criterion of nationality then why lower castes i.e. ST/SC as one oppressed cultural group could not assert themselves as one nationality? Was it due to their dispersal Indian civilization, did not allow them to cast themselves as a separate nationality? If religion can be a basis for a nationality why not caste i.e. those oppressed historically?

It was the struggle against colonial master i.e. freedom struggle which provided the consciousness of Indian nationality. We do not find any regional nationality being oppressed by a major nationality during this period. Even there was no explicit contest among nationalities for exclusive hegemony at all India level. Even during pre-British times the constant feuds and battles among various feudatories were not based upon nationalities rather these feudatories represented cultural fiefdoms. Sikhs, Marathas, Dogras, Rajputs etc., represented cultural communities within certain geographical boundaries. These wars among themselves for supremacy were not the war among nationalities. Rather it was supremacy of political subjugation of one feudatory over other. It was the British capital and its rule which consolidated India as a single unified administrative and political entity.

Independent India:

The ethnic problem based upon language in India started emerging after 1947 India ruling classes till 1960 refused to demarcate state boundaries on linguistic lines, but due to pressure of elitist groups, who were successful in carrying the people alongwith them,

the Indian ruling classes had to bow before the linguistic demands. Though for smoothing working of capitalism it was necessary for Indian capitalism to have a Unitarian state instead of a federal one but due to inherent weaknesses of dependent capitalism and its unevenness, it acquires. The other problem in India was the imposition of capitalism from above. In India till date we have had both capitalistic and pre-capitalistic social and economic structures existing simultaneously.

The continued exploitation both at political and economic fronts in varying forms since independence are the reasons for the emergence of so-called nationality problem in India. The political elite of these areas, who either have no chance to become a part of ruling elites or/are not being accommodated by the regional ruling classes feed the grievances of the people on the name of identities like that of underdevelopment of region due to unequal sharing of resources in that area, in sharing of political power equally which they (these political elite) call self-rule, or devolution of power at the state or village level. The above stated causes are more than enough in charging any number of people politically even to the extent of starting revolts through arms struggles. Once the people are politically charged by these political elites, the regional movements can only be stopped through the provision of political power to these elites. By this we do not underestimate the difficulties and exploitation of the people who are demanding development and equal opportunities in every sphere of their political and economic life. But the solution of the problems of the people lies not in devolution of power or state-centre relations on federal lines. The basic problem is of alienation of people from every aspect of life. Various Left Parties and Left leaning thinkers search solutions either in Indian federal polity i.e., devolution of power at the lowest level or straightway support for secession of the already integrated units. The application of devolution of power in centre-state relations again has inherent limitations. If for some states devolution of power at political level can be the demand, for the same reason financial autonomy will be the greatest damage which these states will suffer as the financially dependent states will like to have their economics subsidized by the

centre. For example, for Punjab which is striving both for political and financial autonomy may be understood as fulfilling the democratic urges of its own people. But for the state like J&K whose economy is subsidized to the extent of 90%, the financial autonomy will be disastrous. Why a prosperous state should subsidize the economy of the neighboring state (s) which lack economic resources? Punjab, if given financial autonomy, will like to sell its wheat and rice at international competitive bidding than to sell it at a highly subsidized rates to the central kitty. Same is the case with Assam and Bihar which are rich with natural resources and minerals. For them making use of their resources exclusively for themselves will starve the Indian economy to the hilt. So is the case with water surplus states. Any State with abundant water resources will make other states dance for its irrigation needs and for human consumption. Some applies in the case of devolution of political power. Even Panchayati elites in the present form will restore to traditional ruling classes and new emerging power groups.

What people get is not self rule but new exploitative masters serving capitalist classes. The problem of India is a problem of political governance. For a multi-religious and multi-lingual Indian Society, its economic and political problem which are presently emerging in the form of political and separatist movements, can only be taken care of by Participatory Democracy (explained elsewhere) in which people are empowered at the grass root level than by present parliamentary democratic practices

NATION STATE :

The basis of the Indian nation state is its civilizational aspect. By Indian civilization we do not mean specific people but civilization as a process, the foundational aspect of which what was found in Indus Valley i.e. Harappan culture. This Harappan culture is neither exclusive to Aryans (whether indigenous or outsiders) nor exclusive to Hindus. The rise of Buddhism, Jainism, Islam, Christianity etc. grew within Indian civilization. Though these religions had their separate symbols and scriptures and even though the Semitic religions like Christianity and Islam were planted from

outside they assimilated most of the civilizational aspects which is called Indianess. Even Christianity and Islam could not shed caste system, due to which the people from lower Hindu castes got converted into these two religions. The contradiction among various religions and groups is sometimes aggravated by regional agricultural capitalists as in case of Punjab or by the newly emerging middle classes, who are finding it difficult to break the political and economic position of the status quoists. The middle classes by coming to the active support of the religious leaders are trying to occupy the political space as being vacated by the failing Indian democratic system. It seems that these middle classes are posing a challenge to Indian bourgeoisie through communalization of politics. Being mere multi-religious and multi-lingual are not sufficient for making India a Multi-national state or nation in the making. India a multi-national State or nation in the making. The economical distortions which we observe in regional demands are more of a practicing polity by ruling classes. Regional bourgeoisie through their regional parties have failed to develop capitalism evenly, even in their respective states. Even where regional and national bourgeoisie have brought economic changes these are only at certain centres which provide raw material and have good infra-structures for capitalistic development. The regional demands are not acceptable to all the people living in those areas. That is why even in different state due to sub-regional variations both developmental and other facilities wise we find political movements based upon culture or language.

Kashmir

Till the beginning of the 14th century, the population of J&K was Hindu. Though Kashmir was successively ruled by Muslims, followed by Sikhs and Dogras, the people in general remained under the yoke of feudalism. The freedom movement in Kashmir before 1947 was anti-Maharaja¹⁰ and was for popular democratic government. It had nothing common with Indian freedom movement i.e. it was not anti British.

In addition to these, in 1920's first Ahmediyas from Punjab and then Ahrars from Lahore started influencing socio-political

scene. The working class of Kashmir comprising Shawl & carpet weavers and Silk factory workers were the most active in terms of collective bargaining. Shawl weavers in 1947 rose in revolt and organized a strike against their oppressive working conditions. About 4,000 shawl weavers had to leave the state to escape the harsh taxation system. They again struck in 1865 in which 29 of them were made to drown in the river. The silk factory workers had also militant tradition of struggle when in 1924 they made a representation against retrenchment in which seven workers died due to the unprovoked firing of Maharaja police. So it can be fairly said that they early 1930's the people of Kashmir were quote aware of their problems though were not organized under any political party. A political party by the name of Muslim Conference was born on June 1931 which presumably catered to demands of Muslims only. The main leader Sheikh Mohd Abdullah and his other core thinkers got it converted into National conference on June 12, 1939. This National Conference started taking up people's demand which was culminated in 'Quit Kashmir' movement of May 1946 when it collided with the Maharaja.

The Maharaja of Kashmir till 15th of August, 1947 did not join either India or Pakistan. With the invasion of Kashmir on 20th Oct. 1947 Kashmir formally acceded to India. Kashmir case was taken to U.N.O where it was agreed to have a plebiscite to determine the will of the people whether to remain in India or to go with Pakistan. After that the relation of J&K with India was governed by Article 370 which provided special constitutional status to J&K.

In Jammu & Kashmir, before & after accession, the search by the valley 'ethnic' Muslim group for "responsible government" found Sheikh Abdullah to champion the causes of the oppressed Kashmiri Muslims. He gained strength and his party, Muslim Conference - later known as National Conference - developed into a vibrant symbol of Kashmir's will to freedom and independence from the aristocratic rule of the Dogras. Soon after independence the union government's attempt to assimilate the Muslim population of the valley by accommodating their dominant classes and strong elites into the near proportionate class positions of the nation state

with certain politico - economic concessions was temporary. Subsequently, the imprisonment of Sheikh Abdullah, a popular and elected leader, in August, 1953 was received by the people with hostile demonstrations on an unprecedented scale. Massive corruption in administration and coercion in the elections of 1962 & 1967 generated a feeling among the people of the futility of democratic participation. The withdrawal of congress support to Sheikh Abdullah in 1977 even after reinstating him in the office in 1975, the dismissal of Farooq Abdullah and so on prove the point further. Sheikh Abdullah's concern for political power, Bakshi's lumpen style of working like bribing all those who mattered, Sadiq's bureaucratic tendencies, foisting of leaders from above by the centre and denial of growth of democracy by Sheikh, Bakshi and others appear as the major political factors responsible for Kashmiri Muslims alienation both from Indian State and its own old leadership.

On the other hand the new class of rural Kulaks, which embodies the elements of both semi-feudal and semi-capitalist relations, emerged due to malpractices in the land reforms implementation. These rural kulaks when not accommodated in political power made Alliances with rural educated youths, who were groomed in Madrasahs (where Islamic education is imparted) formed a political federation called "Muslim united Front". The Front assumed the mantle of Islamic purity and orthodoxy distancing itself from India. It was successful in projecting itself as a rival force viz-a-viz NC/ Congress otherwise involved in "negotiation politics".

SELF DETERMINATION:

The principle of self determination was coined by Lenin, during the struggle of Russian revolution, for national minorities who felt oppressed by the majority ruling classes in Czarist Russia. The criteria of oppression was different culture, different language and economic one. He allowed the cultural minorities, having all the traits of a nation, to have their own homeland, if they so desire. The other formulation of self-determination was by Wilson, the American President, who in the course of the formation of League of Nations proposed self-determination by the colonies. His theoretical

formulation was restricted to colonial states only who were in the midst of their freedom struggle from their colonial masters. Both these variants of self-determination has no applicability as far as Kashmir is concerned. There are different political demands by different three regions of the state.

Political demands vary from regional councils to statehood for three regions. The movement in Ladakh was first started against the economic usurpation by Kashmiri Muslims, which Ladakh people felt legitimately belonged to them. There was a social and economic boycott of Kashmiri Muslims who operated as tourist taxi operators and some even had matrimonial alliance with local Ladakhi girls. This sectarianism divided the otherwise marginalized Ladakhi people. After some months, Ladakhi Kashmiri Muslims were co-opted and now they have hill council where old traditional ruling classes and religious head find prominent places. This clearly shows that in culturally heterogeneous areas different people have different perceptions regarding their marginalization. But the trouble in Kashmir has nothing analogous to what we call deprivation, which a nationality feel. Neither language nor culture or economy, over which they have full control, cannot become a nationality issue. Moreover, historically whenever a nationality felt politically deprived i.e. ruled by people belonging to other cultures they demanded political right in terms of indigenous political leadership. But in Kashmir since 1947, Kashmiri Muslims had been the rulers. And the Kashmir identity, if it is called Kashmiriyat, has only meaning if it means Kashmiri Muslims only and that too a divided one. If it is accepted that it is Kashmiri Muslims problem then it is not a case of Kashmiri nationality but rather Islamic sub-nationalism, as being Kashmiri implies Kashmiri Muslims, Kashmiri Pandits, Kashmiri Sikhs and so on and who are no part of today's troubled Kashmir. The problem in Kashmir since 1947 is sharing of political and economic power by a few. Indian leadership of that time felt more secure in propping up that type of leadership who accepted economic largess in return for political loyalties. The unaccounted money which flowed in J&K was assiduously usurped by various political leadership in conjunction with bureaucracy and emerging

new economic class. We find an iron triangle comprising political class, bureaucracy and business class cementing their grip through matrimonial alliances among each other. This alliance and their hangers on especially government servants and permit - quota class were the lumpen economic classes who sheer thrived on permanent corruption where patronage was provided by this iron triangle. Unequal distribution of land in rural sector with less opportunity for lower middle classes in jobs and other economic outlets were the reasons for the accumulated resentment of these classes against this iron triangle. With no industry of the name there was hardly any working class and whatever little was there was very weak and unorganized. The salaried class of J&K was only the lowest middle class, who was organized but lately have developed fissures with multiples divisions in its ranks. Due to all this, there was no organized working class opposition to the nefarious designs of this entrenched iron triangle. The rise of Kulaks who systematically converted their agricultural lands into orchards were seeking political space. The rural educated youth who were groomed in madrasas became a vocal force of Islamic orthodoxy and started challenging the corrupt and "Un islamic" Kashmiri leadership. This educated rural youth in combination with Jamait-i-islami and rural kulaks had an instant alliance in the shape of Muslim United Front. The political stirrings in rural areas by this group had an upswing success and the rural people of Kashmir started gathering around this new formation. This had a telling effect on the urban neo rich class. Lest they are completely isolated from the people they started going to mosques. They started growing beard and offering huge donations to religious leaning institutions to prove their participation. This way they could move easily with the common folk. But this was not enough. These classes who hitherto had enjoyed the fruits of corruption and now could become focus of wrath of deprived classes needed an enemy towards whom all blames can be laid. This economic struggle between this urban neo rich class as represented by iron triangle and the poor exploited masses which otherwise could have taken the shape of class struggle was successfully transformed into India's baiting holding it was an aggressor and

usurper of just legitimate demands of the Kashmiri people and ultimately its degeneration into a communal struggle. This neo rich class donated heavily and sustained this militant movement. This way this movement could take the form of "peoples'" movement, having its strength amongst its own people. As the movement could not convert itself into class struggle against their own exploiter, the deprived classes came handy to the religious fanatics who offered them all sorts of slogans right from nizam-e-mustafa to Azadi from "infidels".

American block is twice happy in seeking its own dreams coming true in the shape of either an "independent" Kashmir acting as a buffer between China and India or merger of it in Pakistan being people's choice to live with their own brothers. Either way American strategic interests are served. If "independent" landlocked Kashmir can act as its direct colony, being part of Pakistan which still served the same purpose as Pakistan has been serving in the past for being its frontline pawn state in south East Asia. Unless the people of Kashmir understand foreigner's designs, both of Pakistan and of America, and convert this movement into a class struggle against the enemy that is within their movement, and their sacrifices will be of no avail. They will be fighting others people war while the enemy within will go scot free and will be awarded against by joining the "mainstream" politics seeing that the movement is declining rapidly.

Before accepting or rejecting any nationality struggle it is important to analyse it on the following lines:-

- 1) The nature of the Leadership.
- 2) Content of the movement.
- 3) Whether it is based on democracy and secularism?
- 4) Role and safeguard for Regional Minorities.
- 5) Whether the people who demand internal autonomy or secession are historically deprived in any way?
- 6) Whether this movement weakens or strengthen the solidarity of working class?

Lastly, the principle of Right of Nations For self Determination of Nations is healthy one if before applying to any movement it is tested on the criteria as laid above. Otherwise, simply supporting right of Nations without understanding Lenin's principle and applying it mechanically to every separatist movement which weakens the nation state is ultra leftism and adventurism which will only help neo imperialists rather than the people as small and tiny nations can be more pliable and suits to the profit designs of the neo imperialists.

So, according to above detailed analysis we do not see Kashmir problems as a nationality problem. The present ongoing movement is Ethno Religious i.e. it is a problem not merely of Ethnicity, which is due to Alienation of the people from every aspect of their life and religious because here fundamentalists in order to create a political space for themselves are dividing the composite culture of the people, politically.

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Chapter-7

Anatomy Of Terrorism State Terrorism Vs. Sub State Extremism.

Imperialism is the deadliest form of terrorism

It is said that one man's terrorist is another man's freedom fighter. If terrorism is an enemy of individual's freedom, it is a most cost-effective weapon for marginalized section of society against oppressors.

Sub-State extremism arises from and is rooted in factors such as exclusion, discrimination, communalism, anomie, ethnic hatred and the like. It is the militarism, which leads to state terrorism which in turn ends up aggravating sub state extremism. Therefore, it is necessary to recognize the intrinsic link between terrorism and a blatantly partisan use of force by the governments of the civilized world. Democratic world is not prepared to discuss "State Terrorism" even in those cases where brutal force is systematically used against innocent civilians. The search for answer to terrorism should emerge from global society rather than from the perspective of super Power's security apparatus.

State terrorism and terrorism as a cultural product.

Violence shocks an individual's sense of order and disorder. The symbols and rituals of religion intervene to use violence on its sovereign turf. Every liberal democracy has the legitimacy to kill through courts or the police. The state has no other choice except to

monopolize the use of physical force. If the state's legitimate right to take life stems from its social authority over crime and punishment, the terrorist's moral justification comes from his shared articles of faith. Religion provides a 'meta morality' to the terrorist. By elevating a temporal struggle to the level of cosmic, they can bypass the usual moral restrictions on killing. The terrorists groups that seek to change the course of history for whatever reasons try to copy the State flashing their own signs and symbols. They abhor seeing religious institutions becoming sub-servant to the modern state. But in recent time the sovereignty of nation state is under attack from the forces of globalization. Nation-state and religious fundamentalism have a common enemy in Globalization but their objectives unfortunately are different.

America - the mirror image of terrorism.

America's record as a democratic state which values democratic aspiration of others is highly flawed and has had been profoundly undemocratic like.

1. Iran and Central America in 50's.
2. Brazil, Cuba and Vietnam in 60's
3. Chile, Southern Africa, Nicaragua and El Salvador in 80's
4. Panama, Haiti and Angola or first Iran-Iraq war
5. Roughly 50,000 Iraqis mostly children sent to an early grave by America.

In each case, America either snuffed out democratic or moderately nationalistic regimes or sided with brutal dictators. Even in this sub continent America preferred dictatorial Pakistan as it suited its foreign policy of containment of communism than to prop up nascent Indian democracy.

It is difficult to forget Hiroshima and Nagasaki, Vietnam and Gulf war. It is difficult to forget how the United States has sold and distributed arms and weapons, promoted terrorists organizations, dictators and banana republics and divided the third world for retaining its own happiness and prosperity. America means immense

misery to innumerable silent victims of 'super power politics'. America is rooted in logic of power. America invites violence.

American credentials to fight terrorism globally.

Even the credentials of America to fight terrorism globally is suspect its primary aim is not to punish those who are guilty and who dared to pin him down in its safest 'sanctuary' but to have a geo-strategic foothold in Central Asia. Osama bin Laden provided enough excuse for America for control over free flow of gas and oil. Afghanistan is a indispensable to regional control and transport of oil in central Asia as Egypt was in Middle East. Pipelining thro Afghanistan would allow the United States both to pursue its aim of diversifying energy supply and to penetrate the world most lucrative markets. So a pro-western regime in Kabul should give the United States and Afghanistan who should act its front paw not only checking Russian ambition but the onward march of China who in a near future as a potential superpower will take head-on America thus disproving the End of History and consequently the much touted the racial segregation of clash of civilizations. The material natural erosion of old values, they try to reinvent a 'Sharia' or a 'Ramrajya' with the help of radical nationalism.

Causes and Responses to State terrorism.

Autocracy in feudal times destroyed any type of dissent. Czarist Russia gave rise to Narodnya Volya, which tried to change the course of history through individual assassinations as Czarism killed every potential force which they perceived to threaten it. Michael Bakumin and August Blanqui, were the forerunners of sub-state terrorism advocating the annihilation of State being the sine qua non of every evil. They advocated that State of any type is like and oppressor, which need to be cut from its very base. They did not conceive state of any consequence, as it does not reflect the collective will of the people. It needs to be destroyed to be replaced by the collective free will of the masses. This ideology which came to be known as Anarchism was humanitarian in character and utopian in nature. In colonial times Secret Societies flourished every where

as an answer to colonial oppression. India also witnessed such secret societies like Ansulin Samities in Calcutta which tried to overthrow British rule through terrorist methods. The point which is a prime importance here is that colonial powers through their loot and oppression had not left any scope for democratic dissent. These terrorist organizations were secular in character and their goal was independence and hence was goal specific. Then terrorism was contextual, that is, freedom from the dictatorial powers of colonial rulers.

It needs to be emphasized that one must /should differentiate between individual of group of terrorists whose terrorism is for their personal gain to choke the democratic and secular voices, for one upmanship from other terrorist groups. It is not necessary that terrorism is always manifest it can be latent also. Terrorism engaged by warlords, gangsters are of latent type and can more nerve raking than physical one. Engage in the same purpose, terrorists engage in hate-campaign with other minorities or religion. As terrorism is contextual it is in any case cannot replace secular mass movements. But terrorism as a tool in a freedom movement can have electrifying effects in awakening the slumbering masses. Hence the terrorism used by a state to crush mass greed in combination with political control of Afghanistan is the only motive of America.

How to Fight Terrorism.

It is important to discard terrorism of all sorts. Because terrorism is nihilistic not life affirming. Terrorism worships Thanatos not Eros. Because of its own logic it intensifies the enemy it seeks to fight. It is therefore anti-revolutionary. A terrorist organization loses transparency; It is bound to become authoritarian. The real solution lies in worldwide social movement for creating a new civilizational agenda that rests on the principle symmetry and harmony, equal distribution of wealth and resources.

At the end let us not dub every Pathan as war-monger who is after flesh of the so called 'civilized' people of the West but a Pathan who in our memory lane is a true friend as aptly depicted by Rabindra Tagore in his immortal Kabuliwallah.

Chapter – 8

Genesis of Militancy in Kashmir

All revolutions devoured their own children!

The militancy in Kashmir in the present form which started in late 1989 is the combination of many factors. The precise nature of it should be searched in,

- I. Unequal land reforms ultimately giving rise to rural kulaks.
- II. accumulation of economic benefits by class combination of politicians-businessmen -bureaucrats triad; aptly called Iron Triangle.

Land reforms which should have signaled the democratization of rural population but due to wrong policies like retaining the old parasitic revenue officialdom¹ for scrutinizing the beneficiaries of this reform helped in manipulating the revenue record by effecting benami transactions. This way many big agriculture household remained outside the purview of land reforms. After sometime these households finding themselves outside the fringe of political benefit is started nursing their own constituencies. By flouting the government agriculture policy they started converting their agriculture land into profitable orchards. Thus by garnering economic benefits due to this cash crop they become economically formidable.

If on the one hand they had no social base, as some economic benefits had percolated to the vast peasantry on the other they were in search of allies who can put a challenge to the entrenched political leadership.

In the early period of Kashmir politics, Indian government not sufficiently sure to win the Kashmir masses tried to win them by providing huge money in Five Year Plans. Huge money was ploughed into Kashmir which was looted by political-business groups. At administrative level a new parasitic class of bureaucrats came into being through local recruitment. Majority of selected candidates belonged to the political-connected people. The salaried class both at higher and lower rung indulged in huge corruption duly supported by bureaucracy and political leadership who were otherwise their partner in this loot. New sprawling colonies started coming up where lifestyle of these lumpen middle classes were the envy of the downtrodden. The middle classes remained skewed both to National Conference and Congress. The latent class struggle of the masses towards this corrupt alliance remained dormant. In absence of sustain tail working class their anger towards this parasitic class could not channelized along democratic lines. The National Conference and the Congress, being extension of Indian ruling classes, used these contradictions in their own idioms. National conference when in opposition exploited people's problems by giving slogans like, "Kashmiri people struggle and blood will not go waste" i.e. the source of problem of Kashmiri people were put at the doorsteps of Indian ruling classes. Congress on the other was more interested in the complete integration of Kashmir with India which they think they can do by co-opting influential sections of Kashmiri society. By these political stances economic contradictions further accentuated thereby alienating the people further from the two mainstream political parties. The political zig zag traversed by National Conference first in the form of Plebiscite Front and then dissolving it for the sake of political power further confused the people towards their political leadership.

The intervening period i.e. from the dismissal of Sheikh Abdullah till the accord of 1975, when he again assumed power,

Indian ruling classes used every Machiavellian trick of statecraft by providing every loaf and bread to manipulative local Kashmiri leaders. Salaried, business and bureaucratic classes pocketed crores of rupees as funds and grants running into unaccountable money was provided to the local ruling classes. A neo riche class emerged by the active support of local leadership which was continuously foisted by the Indian state. The kulaks (rich peasants) that had emerged in rural areas were in search of allies to give challenge to post 1975 Sheikh's leadership. Young fiery educated youths from Aligarh Muslim University in combination with the religiously educated youth from local madrasas started emerging as a formidable force first in rural areas of Kashmir, especially Southern areas, and then starting penetrating urban centers of Kashmir. They came under one political umbrella called Muslim United Front (M.U.F) posed challenges to Sheikh's hegemonic politics in Kashmir. The rival centers of contending powers of the then ruling class and urban businessmen in alliance with bureaucracy vis-à-vis rural kulaks in combination with M.U.F conglomerate gave new dimension to Kashmir politics. The Indian ruling classes as being represented by Indian National Congress finding difficult to have any foothold in Kashmir sought alliance with these rural kulaks. The state Congress helped in establishing madrasas by covertly funding politico religious organization of Jamat-i-islami in rural areas. Congress funded lavishly these madrasas because it felt that only forces bred by these institutions can become rival centre to National Conference as was represented first by Sheikh Mohd Abdullah and later by his son Farooq Abdullah. Now National Conference was having rivals in shape of Jamat-i-Islami and M.U.F who were helping each other in tandem. The indoctrination by these rival organizations of N.C that Sheikh Abdullah is an agent of India who in the garb of a Muslim messiah is fooling one and all helped inculcating a sense of alienation in addition to other factors. People started believing that their ruin was the handiwork of their own indigenous leadership which has had continuously betrayed them, and only Islam is the core idea encompassing every democratic and political activity. Indian state and the National Congress were perceived to be the real

enemy.

When the emerging rival forces as schooled in madrasas and under the banner of M.U.F failed to find any foothold in Kashmir politics the only alternative left to them, (as they have publicly admitted many a times since then) was to start armed struggle.. It is this section of the people which first penetrated JKLF and subsequently became the fighting force of Hizb-ul-Mujahideen. . One can pertinently ask what happened to traditional secularism of Kashmiri people and why Kashmiri people became unsecular or non-secular in their present struggle.

The historical roots of secularism in Kashmir dates back to Nund Rishi and even before him when Sufi saints had complete sway over the convertes to Islam. Arabic Islam was never taught in Kashmir but the convertes carried many rituals and practices of Hinduism. As sofi version of Islam was more democratic and secular in its assertions the muslim in Kashmir found easy accommodation with their other counterparts. Mazars, peers and rishis which are otherwise iconoclastic in orthodox Islam were the real influencing forces over the convertes. Tableek leaders who religiously operated from Masjids have had become the rival political centres and influenced the course of history in Kashmir. Rishis and peers were revered both by Hindus and muslims. By congregating on mazars for their offerings and prayers the brotherhood bondage between the communities was very strong. The tradition of secularism was all pervasive in three regions of J&K i.e. Jammu Kashmir and Ladakh which started cracking by coming on the scene of Jamait-i-Islami. It is interesting to note that the older generation of 1947 having rooted their ideology in secularism does not approve of the methods of their own offspring. There is a sort of cultural generation gap between 1947 having rooted their ideology in secularism does not approve of the methods of their own offspring. There is a sort of cultural generation gap between 1947 generation and the present one. By virtue of this there is a clash of perceptions and ideology between these two generations regarding the present movement. As the gun is with the young generation they hold sway on every aspect of the present political movement in Kashmir. Hence

the alienation of the present Kashmiri youth, in addition to other factors, has its root in the politics which Sheikh Abdullah played in tandem with Indian ruling classes.

The uneducated rural youth who have been grown up educationally in madrasas and were highly sensitive towards Islamic orthodoxy were the ideal partners to the rural kulaks. They forged an alliance under the banner of Muslim United Front and decided to put their won candidates in the elections of 1987. Unemployment, poverty, growing alienation both from NC & Congress, corrupt means of administration, enjoyment of economic benefits by a few who were politically connected, were some of the reason which MUF exploited fully to its advantage. In addition Indian fastidiousness was held responsible for the present state of affairs of Kashmir and its people which could only be challenged by Islamic purity as advanced by MUF. Rigging of elections in 1987 where many MUF stalwarts who had great winning chances were defeated by NC minions. This proved the last proverbial straw in the sinking boat of parliamentary democracy in J&K. Not finding much to gain from the present political set up the call for independent Kashmir was given where these kulaks could have a dominant position. This position is analogue to the pre-partition position of Muslim League where landlord class ultimately joined Jinnah's leadership because this class found safer pastures to exploit in the independent Muslim Pakistan where there will be no danger from any bourgeois class.

The class combination of JKLF is very important to understand. It comprises of educated unemployed youth supported by the rich peasantry and a section of middle class. Its influence is more in urban areas. JKLF is not clear what Kashmiriyat comprises of rather when Kashmiriyat is translated in JKLF idiom it seems analogous what Hindutiva is to BJP. As JKLF was quite popular among the Kashmiri Muslims but demanding what was different which Pakistan desired so Pakistan tried to break this exclusive hold of JKLF by floating parallel armed Muslim organizations. This Pakistan did by exploiting the religious factors the grounds for which was already meticulously laid by Jamat-i-islami Pakistan floated Hizb-ul-Mujahideen which is an armed wing of Jamat-i-islami. This was

done for two reasons. The first was to check the leadership and demand of independent Kashmir would have weakened the concept of Islamic identity and will strengthen the concept of cultural identity. A successful independent Kashmir can have cascading effect in provoking the already disturbed cultural identities in Pakistan namely, Sindhi, Pukhtoon and others. The second aspect was to create number of parallel political-armed centres that if one group becomes weak or emendable to Indian pressures other group will replace it if the situation so demands. This strategy of Pakistan proved quite successful and its initial exclusive support to JKLF which politicize Kashmir politics in early phases, is growing weak and other armed outfits are getting enormous financial and armed support.

In substance it can safely be assumed that militancy can only start and sustain if the objective and subjective conditions prevail in a particular historical period such as,

- i. Not fulfilling the promises on economic and social front as was agreed upon during popular struggles.
 - ii. Non establishing and non functioning of democratic institutions.
 - iii. Continuous betrayal by indigenous leadership.
 - iv. Continuance of dynastic rule even in Parliamentary democracy which only shows that the political party lacks democratic functioning and is ruled by hero or charismatic leader.
 - v. When bureaucracy switches loyalty to upcoming change to defend its own privileges and hide its own economic loot.
 - vi. Allowing communalization of political and social structures for regional gains.
- As economic classes being historically situated lack ideology of its own and to get the mass support base to wrest the political power it remain in search of an ideological class to project and sustain itself. Only ideological class can provide sanctity and legitimacy to emerging economic class. By forging an unholy alliance these two classes find a support base for their struggle for power.

Rural kulak, a defendant of its own privileges could not on its own put challenges to the ruling classes of Kashmir. It lacked both ideological class but always in search of alliances to put a challenge to the 'infidels' which in its eyes were all those who rules Kashmir or in India. Educated youth and lower middle classes who were the most sufferers and provided the social base to the class alliances of Jamait-i-islami and rural kulaks. Kashmir militancy drew its cadres from these youth and lower middle classes and is sustaining because of the above factors, in spite of the economic causes which majority of Kashmiri people were subjected to. At present subjective factors have predominance that is why any economic package by Indian government is not accepted by them because they feel that it is their ethno-religious demand which is more important than any other solution?

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Chapter - 9

State and Sovereignty-an evolving Concept

State is a coercive apparatus; it must wither

The concept of the state and when it came into being has remained in a serious political discourse since centuries. The division from the earlier times we first time hear city-state of Greek where the population was divided between free and slave population. The citizen rights were only vested with free population. These were called monarchies having dual function of a religious head and head of army. In Roman republic the difference was in governance having a senate to be headed by the aristocracy.

The current form of state, which we call modern state, had its origin in 15th. Century of Western Europe. The present features of the modern state started consolidating then into a coherent form. Conceptually, now the state means a centralized authority having a jurisdiction over a fixed geographical area. Now the monarchical states of Western European, now being ruled by succession of dynasties, like England under Tudors, Spain under Hapsburgs and France under Bourbons, started centralizing all powers, spiritual and temporal, into their own hands than sharing with anyone i.e. either with the church or with the lesser nobility.

Here we are concerned with the modern state of which Italian thinker Machiavelli is credited with his book entitled *Prince*. Subsequently European thinkers Thomas Hobbes, John Locke and John Bodin, are credited with the present concept. For Hegel the state personified the ultimate idea which he called Spirit. For Weber the state has full control over its subjects (over a defined territory) including their lives and violence by the state over its subjects is legitimate. For Anarchists the state was anathema, a impediment in peoples overall growth and the sooner it is destroyed the better it will be. For Marx the state comes into being at a certain historical juncture by the capitalist classes for their own property and dominant interests and is a coercive apparatus "withering" of which will come through the combined efforts of the ruling working class forces in the shape of Communism. The present concept of the state is, it is a legal institution for the equal benefit of all and through its institutions the civil society is regulated. For modernists state is a sort of protective umbrella over its people. The state, as it is, has recently come under severe threat from the armed insurgents for whom state is simply a military power and serves the interests of the powerful and the majority community.

State is a political association having an effective dominion over a geographical area. It usually includes the set of institutions that claim the legitimate authority to make the rules that govern the people of the society in that territory.

As, here, the state is our central focus, it must be clearly defined. Alfred Stephen, considers the state more than the 'govt' as it is the continuous administrative, legal, bureaucratic and coercive systems that attempt not only to structure relationships between civil society and public authority in a polity, but also to structure many crucial relationships within civil society itself². But Skocpol emphasises that state should be analysed in relation to socio-economic and socio-cultural contexts. But according to Nordlinger, the state overall, is an instrument or mechanism of organised domination and institutionalized coercion.

Empirically (or de facto), an entity is a state if it is that

organisation that has a monopoly of violence over a specific territory (Max Weber). Such an entity imposes its own legal order over a territory, even if it is not legally recognized as a state by other states as in the case of Somali, a region of Somaliland.

Juridically (or de jure), an entity is a state in international law if it is recognized as such by other states, even if it does not actually have a monopoly on the legitimate use of force over a territory. Only an entity juridically recognized as a state can enter into many kinds of international agreements and be represented in a variety of legal forums, such as the United Nations.

State and its political systems

The concept of the state can be distinguished from two related concepts i.e. the form of the govt. (whether democracy or dictatorship) and the political system. Thus generally speaking the term "state" refers to the instruments of political power while the term regime or form of govt. refers more to the way in which such instruments can be accessed and employed.

Evolution of feudal state to the modern state in the West

The story of the development of the specifically modern state in the West typically begins with the dissolution of the western Roman Empire. This led to the fragmentation of the imperial state into the hands of private lords whose political, judicial, and military roles corresponded to the organization of economic production. In these conditions, according to Marxists economic unit of society – was the state. The institutional features that characterize the "modern state." This centralization of power involved the delineation of political boundaries, as European monarchs gradually defeated or co-opted other sources of power, such as the Church and lesser nobility. In place of the fragmented system of feudal rule, with its often indistinct territorial claims, large, unitary states with extensive control over definite territories emerged.

Culture, language and territory became the basis on nations though state took upon itself the job of homogenisation of nations i.e.

those were not strictly belonging to that nation the state through its coercive and other administrative apparatus made them to fall in national line. Thus nation and state are two distinct categories and it is not necessary that total population of a country belong to one nation only.

State and civil society

The modern state is both separate from and connected to civil society. Some Marxist theorists, have questioned the distinction between the state and civil society altogether, arguing that the former is integrated into many parts of the latter. Others, have argued that civil organizations such as church, schools, and even trade unions are part of an 'ideological state apparatus.

The State, International law and Super Power

By the laws of international relations a state's sovereignty is conditional upon the diplomatic recognition of the state's claim to statehood. Degrees of recognition and sovereignty may vary. However any degree of recognition, even recognition by a majority of the states in the international system, is not binding on third-party states. Everyone knows that some nation states owe their existence not due to any international law but being rapid pro America, the super power. The case of Taiwan (a part of China) and the state of Israel are the two instances.

The legal criteria for statehood are not obvious. Often, the laws are surpassed by political circumstances as stated above. However, often quoted document on the matter is the Montevideo.

What is Montevideo Convention of 1933

The Montevideo Convention on the Rights and Duties of States was a treaty signed at Montevideo, Uruguay on December 26, 1933, at the Seventh International Conference of American States. At this conference Roosevelt tried to show the good image of America which has been sullied by his predecessor. The convention sets out the definition, rights and duties of statehood. Article 1, sets out the four criteria for statehood that have sometimes been recognized as an

accurate statement of customary international law.

The state as a person of international law international should possess the following qualifications: (a) a permanent population (b) a defined territory (c) government and (d) capacity to enter into relations with the other states.

Furthermore, the first sentence of article 3 explicitly states that "The political existence of the state is independent of recognition by the other states."

The European Union in the principal statement follows the Montevideo Convention in its definition of a state: by having a territory, a population, and a political authority. The committee also found that the existence of states was a question of fact, while the recognition by other states was purely declaratory and not a determinative factor of statehood.

Various approaches to the study of the state

There are three main traditions that shape 'theories of the state': the Marxist, the pluralist, and the institutionalist. Each of these theories has been employed to gain understanding on the state, while recognizing its complexity. Several issues underlie this complexity. First, the boundaries of the state are not closely defined, but constantly changing. Second, the state is not only the site of conflict between different organizations, but also internal conflict and conflict within organizations. Some scholars speak of the 'state's interest,' but there are often various interests within different parts of the state that are neither solely state-centered nor solely society-centered, but develop between different groups in civil society and different state actors.

Marxism

For Marxist theorists, the role of modern states is determined or related to their position in capitalist societies. According to Marxism, the state is a capitalist state formed and controlled by capitalist interests. That means state represents class interest which ipso facto gives rise to class struggle. As the state represents only capitalists

STATE & SOVEREIGNTY – AN EVOLVING CONCEPT

interests it is a coercive apparatus for other struggling and exploitative classes. There is no level playing field as the purchasing power of people is not same. Through money and political power the capitalists have the field day whereas the marginalised ones are the sufferers. State and its institutions are controlled by the capitalist class, thereby state and its institutions serve only one class i.e. capitalist class and need to be uprooted.

Pluralism

Pluralism, a contending approach, gained greater adherence in the United States. The pluralist tradition sees the state as either a neutral arena for contending interests or its agencies as simply another set of interest groups. With power competitively arranged in society, state policy is a product of recurrent bargaining. Although pluralism recognizes the existence of inequality, it asserts that all groups have an opportunity to pressure the state. The pluralist approach suggests that the modern democratic state's actions are the result of pressures applied by a variety of organized interests.

Institutionalism

Both the Marxist and pluralist approaches view the state as reacting to the activities of classes/groups within society, such as classes or interest groups. New institutionalism an approach to politics that holds that behavior is fundamentally moulded by the institutions in which it is embedded, asserts that the state is not an 'instrument' or an 'arena' and does not 'function' in the interests of a single class. Scholars working within this approach stress the importance of interposing civil society between the economy and the state to explain variation in state forms.

"New institutionalist", suggest that state actors are to an important degree autonomous. In other words, state personnel have interests of their own, which they can and do pursue independently (at times in conflict with) actors in society. Since the state controls the means of coercion, and given the dependence of many groups in civil society on the state for achieving any goals they may espouse, state personnel can to some extent impose their own preferences on

civil society.

In this way two concepts were introduced in order to justify sovereign power: the idea of a state of nature and the idea of a social contract. The first concept describes an imagined situation in which the state - understood as a centralized, coercive power - does not exist, and human beings have all their natural rights and powers; the second describes the conditions under which a voluntary agreement could take human beings out of the state of nature and into a state of civil society. There seems to be a justification by the above said concepts (barring Marxism) to justify more or less extensive forms of the state as a remedy for the problems of the state of nature.

The idea of the social contract lent itself to more democratic interpretations. Rousseau, for example, argued that the only valid social contract would be one where individuals would be subject to laws that only themselves had made and assented to, as in a small direct democracy.

Sovereignty

Sovereignty is the exclusive right to exercise supreme political (e.g. legislative, judicial, and/or executive) authority over a geographic region, group of people, or oneself. A *sovereign* is the supreme lawmaking authority, subject to no other. Thus the legal maxim, There is no law without a sovereign.

The source or justification of sovereignty ("by God" or "by people") must be distinguished from its exercise by branches of government. In democratic states, sovereignty is held by the people. This is known as popular sovereignty, it may be exercised directly, as in a popular assembly or, more commonly, indirectly through the election of representatives to government. This is known as a representative democracy, a system of government currently used in most western nations and former colonies. Popular sovereignty also exists in other forms, such as in constitutional monarchies usually identical in political reality as in the United Kingdom and Commonwealth realms. Systems of representative democracy can also be mixed with other methods of government, for instance the use of referenda in

many countries.

In this model, national sovereignty is of an eternal origin, such as nature, or a god, legitimating the divine right of kings in absolute monarchies or a theocracy.

A more formal distinction is whether the law is held to be sovereign, which constitutes a true state of law: the letter of the law (if constitutionally correct) is applicable and enforceable, even when against the political will of the nation, as long as not formally changed following the constitutional procedure. Strictly speaking, any deviation from this principle constitutes a revolution or a coup d'état, regardless of the intentions.

In constitutional and international law, the concept of sovereignty also pertains to a government possessing full control over its own affairs within a territorial or geographical area or limit, and in certain context to various organs (such as courts of law) possessing legal jurisdiction in their own chief, rather than by mandate or under supervision. Determining whether a specific entity is sovereign is not an exact science, but often a matter of diplomatic dispute.

Concept of sovereignty

Jean Bodin describes the sovereign as a ruler beyond human law and subject only to the divine or natural law. He thus predefined the scope of the divine right of kings, stating. Sovereignty is absolute, thus indivisible, but not without any limits: it exercises itself only in the public sphere, not in the private sphere. It is perpetual because it does not expire with its holder. In other words, sovereignty is no one's property: by essence, it is inalienable.

Rousseau's definition of popular sovereignty, which only differs in that he considers the people to be the legitimate sovereign. Likewise, it is inalienable - Rousseau condemned the distinction between the origin and the exercise of sovereignty, a distinction upon which constitutional monarchy or representative democracy are founded. Many political thinkers and philosophers like Machiavelli, Hobbes, Locke and Montesquieu are prominent players in the unfolding of the concept of sovereignty.

Carl Schmitt's sovereignty as "the power to decide the state of exception", Walter Benjamin's theory of violence, Georges Bataille's heterodox conception of sovereignty, inspired many thinkers, like Derrida.

There exist differing views of sovereignty. Rousseau being the father of French Revolution, which heralded the peoples' power, states that

• Sovereignty, or the general will, is inalienable, for the will cannot be transmitted; it is indivisible, since it is essentially general; it is infallible and always right, determined and limited in its power by the common interest; it acts through laws. Law is the decision of the general will in regard to some object of common interest, but though the general will is always right and desires only good, its judgment is not always enlightened, and consequently does not always see wherein the common good lies; hence the necessity of the legislator. But the legislator has, of himself, no authority; he is only a guide who drafts and proposes laws, but the people alone (that is, the sovereign or general will) has authority to make and impose them. But the sovereignty as conceived by Rousseau is situated only in Popular democracies and not in Representative democracies where the shift in power is from people to the parliament.

• Anarchists and some libertarians deny the sovereignty of states and governments. Anarchists often argue for a specific individual kind of sovereignty. Max Stirner, Salvador Dali and Derrida supported individual sovereignty over parliament sovereignty. Some supporters of democratic globalization consider that nation-states should yield some of their power to a world government controlled by world citizens instead of being organized as now in an intergovernmental basis.

The key element of sovereignty in the legalistic sense is that of exclusivity of jurisdiction.

Specifically, when a decision is made by a sovereign entity, it cannot generally be overruled by a higher authority. By higher authority we mean that can there be a more higher authority than the people which can overrule peoples' verdict. There can only be one

that is a centralized state. Further, it is generally held that another legal element of sovereignty requires not only the legal right to exercise power, but the actual exercise of such power. In other words, neither claiming/being proclaimed Sovereign, *nor* merely exercising the power of a Sovereign is sufficient; sovereignty requires *both* elements.

What the existing International Law states regarding Sovereignty?

In international law, sovereignty is the legitimate exercise of power by a state. Foreign governments recognize the sovereignty of a state over a territory, or refuse to do so.

Sovereignty may be recognized even when the sovereign body possesses no territory or its territory is under partial or total occupation by another power. The Holy See was in this position between the annexation in 1870 of the Papal States by Italy and the signing of the Lateran Treaties in 1929, when it was recognised as sovereign by many (mostly Roman Catholic) states despite possessing no territory – a situation resolved when the Lateran Treaties granted the Holy See sovereignty over the Vatican City. Similarly, the governments-in-exile of many European states like, Norway and the Netherlands during the Second World War, were regarded as sovereign despite their territories being under foreign occupation; their governance resumed as soon as the occupation had ended. The government of Kuwait was in a similar situation *vis-à-vis* the Iraqi occupation of its country during 1990-1991.

This clearly shows that sovereignty does not necessarily lie in the actual possession of the territory and there can be two sovereignties in a single country like in Italy i.e. Vatican city and mainland Italy. In light of the above instances Dalai Lama can be a sovereign over Tibet which is occupied by China.

Let us take the classical case of America. When different states federated in a confederal state called United States Of America, there was an agreement that any individual state can opt out of this combined Union if other parties broke the agreement, i.e. any federal law which the agreed state finds unconstitutional, under the terms

of which they had united. That is even after “merger” every federated state was sovereign in its own right. This was amply clear

This is amply clear when James Madison stated in the “Federalist Papers” that each State, in ratifying the Constitution, was to be considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution [was to be] a federal, and not a national constitution.” At the 1787 constitutional convention a proposal was made to allow the federal government to suppress a seceding state. James Madison rejected it saying, “A Union of the States containing such an ingredient seemed to provide for its own destruction. The use of force against a State would look more like a declaration of war than an infliction of punishment and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound.”

. However, Lincoln’s later declaration that “no state may lawfully get out of the Union by its own mere motion”, based on the premise that “the Union is older than the Constitution.”

Modern legal scholars, however concur with Madison’s initial claims that the states ratified the Constitution acting in the capacity of sovereign nations.

We have briefly described the concept of state and sovereignty. But there are competing claims to sovereignty made by juridical states on one hand and intra state communities on the other which defined themselves as distinct nationalities. But assertions of nationalism defined in opposition to the state have been commonly treated as some kind of deviant behaviour¹.

The contest is, above all, over the notion of sovereignty- a conceptualization of sovereignty that emanates from the highest echelons of a centralized state is at its fundamental variance with one that holds that sovereignty resides essentially in the social base of self-defining community, the ‘nation’²

In order to lessen the tension between state and civil society it is imperative that before secessionist movement, whatever the causes,

raise their head, the Indian State should come out from its rigid centralised stance and take cue from the European Union where there is a free flow of persons from one area to another, to get jobs, to settle there or to own property. The national borders of the European Union countries now have no relevance except the respective demarcation on their respective geographical boundaries. They have one currency and a European Parliament where member countries sort out their mutual problems inner or intra state. European Union clearly illustrates that the old rigid concept of State has given way to a accommodating State.

In Kashmir or in any other State of India where secessionist movement are going on or there are chances of starting these movements, it will be prudent on the part of Indian State to loosen its centralised character so that these movements can be accommodated in a democratic order.

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1. States, Nations, Sovereignty, Sumentra Bose, p.26, 1994, New Delhi.
2. *ibid.*, p.27
3. *ibid.*, p.178

Chapter-10

Self Rule - A Conceptual Framework

Sovereignty should lie with the People and not with the State

Historical Background

1947 Partition formula envisaged that Muslim majority areas will form Pakistan and Hindu majority areas will form India with contiguity of territories being another factor. Till zero hour of 15th Aug. Maharaja of J&K State did not join any dominion. On 27th Oct. 1947 Indian troops landed in Kashmir, on the specific request of Maharaja, to clear the areas of Pak invaders. Sheikh Abdullah was released from jail and was made Chief Administrator of state. India took the matter to U.N.O, which asked both the states for immediate ceasefire, simultaneously withdrawal of forces, asking India to keep minimum forces for law and order, and then plebiscite to ascertain peoples' wish under U.N.O supervision. The U.N.O resolution could not be carried out which led to three wars between India & Pakistan and now the present militants' struggle.

Consciousness

Kashmiri peoples' consciousness about their oppression by the feudal system was inculcated under the leadership of Sheikh Abdullah. The consciousness of Jammu and Ladakh people was

dormant in early pre-partition period. Hence Sheikh was accepted the undisputed leader of whole of J&K. With the rise of consciousness of Jammu & Ladakh people in terms of their marginalization vis-à-vis Kashmiri leadership has resulted in demands like statehood for Jammu and union territory status for Ladakh. Other forms of separatism of these two regions are 1) complete integration of J&K with India 2) Regional councils for three regions 3) Trifurcation of J&K State etc.

With the complete division of three regions according to their political interests with the simultaneous rise of militancy in Kashmir, is it possible to accommodate the interests of all warring factions with the consent of two main political actors i.e. India and Pakistan? Is it possible to take any political decision without the tacit approval of Western and American super powers?

Ideology & Political Hegemony

America in alliance with Pakistan used every military stratagem first in containing communism in Afghanistan. When the 'infidels' were out from Afghanistan, Pakistan started controlling warlords fighting in Afghanistan. Taliban took their battle to America and after 9/11 Sept. America threatened Pakistan either to be its ally in destroying what it called Islamic fundamentalism or face economic blockade. The about turn the Pakistan did in its relation with its Islamic 'Co-brothers' demonstrates that in international politics the balancing of political forces, as dictated by military super power, is the driving force i.e. no ideology but political hegemony based upon economic and military power is the determining factor. For instance, the Non-aligned movement having a membership of 77 nations could not act as a bulwark against American onslaughts against duly elected govts. Likewise, OIC members comprising about 52 nations could not save Palestine from the attacks and occupation by the Israelis. It is true there are contradictions among Muslim states but ultimately it is national interests than the ideology, which can bind the nation states together. America through its military might and economy controls various states.

In this imperfect world we have imperfect world institutions.

U.N.O right from its inception was an unequal world body where only five militarily powerful states given the absolute power of veto. Still all the countries of the world sought its unequal membership. All the disputes between nation states are taken to this unequal institution for arbitration. In the international arena no country can afford to be isolated and seeks membership of these imperfect world bodies. The ex-communist giant and a militarily superpower i.e. Russia is begging to be a member of W.T.O as America and other western powers have not given their consent to its 'pending' application for its membership. Does it suggest that all the developing nation states have to live with their fait accompli? The answer is big No. In the changing world alliances and mutual economic interests, if China, Iran, Pakistan, India and Russia form an economic cartel they can act as a great bulwark against American interests. China and America are old rivals, now Iran faces an economic blockade and even military attacks from America and its allies, if India and Pakistan change their old mindset being old rivals, this economic block can act simultaneously as a strategic one in military terms also. That is why to check the political hegemony of America and other western powers there is an urgent need to form new alliances and settling the old conflicts on give and take policy. Lack of democracy, weak and dependent economy, Army rather than people being center of power are sufficient conditions to make a nation state in becoming a satellite power rather than being on its own. When the evolving democratic institutions (including political parties) are destroyed or forced to become subservient (as the recent case of dismissal of Chief Justice of Pakistan), a nascent nation-state lose its resilience and vibrancy in checking the hegemonic onslaughts of super powers. That is why it is important to build powerful democratic institutions so that peoples' energy can be unleashed.

CONCEPTIONAL FRAMEWORK OF Self-Rule

Rousseau's Social Contract and General Will

According to Rousseau, a government can only be legitimate if it has been sanctioned by the people, in the role of the sovereign. Rousseau claimed that a perfect society would be controlled by the

"general will" of its populace. He suggests that assemblies be held in which the every citizen can assist in determining the general will. Without this input from the people, there can be no legitimate government. Importantly, this input cannot come from representatives, but must be from the people themselves. The Sovereign, having no force other than the legislative power, acts only by means of the laws; and the laws being solely the authentic acts of the general will, the Sovereign cannot act save when the people is assembled.

Every law the people have not ratified in person is null and void — is, in fact, not a law. The legislative power belongs to the people, and can belong to it alone. The Social Contract was a progressive work that helped inspire political reforms or revolutions in Europe, especially in France. The Social Contract finally expelled the myth that the King was appointed by God to legislate; as Rousseau asserts, only the people, in the form of the sovereign, have that all powerful right. The heart of the idea of the social contract may be stated simply: Each of us places his person and authority under the supreme direction of the general will, and the group receives each individual as an indivisible part of the whole. General will is what the body politic (community of citizens) would unanimously do if they were selecting general laws and were choosing/voting with full information, good reasoning, unclouded judgment (bias and emotion can cloud judgment), public spirit, and attempting to discern the common good.

People should *submit* their will to the general will which cannot be wrong and whoever refused would be subject to compulsion, so to express the general will is to express every man's common will. The individual and all his rights are to be handed over to the whole community, and in compelling him to conform the community is only "forcing him to be free".

What Constitutes Self Rule?

Self rule is a concept where people govern and not political parties or the state. Sovereignty should lie with the people. Casting of votes every five years and changing political masters is not self rule. There is hardly any difference between various ruling classes.

So to change one ruling class by another or a demand for control over the state by one political variation by another is not a self rule. State is the embodiment of its people and political parties are one of the democratic institutions of the state. Through sovereignty of People State comes into force. Any Self rule should have sovereignty of people over State But in case State overlords over its own people or starts behaving dictatorially that means there is something amiss in peoples' sovereignty. Though the State has relative autonomy vis-à-vis its people, the evolving democratic institutions can check this relative autonomy of the State. That does not suggest that State and its people are continuously in tension with each other. This tension can only lessen if people are taken as sovereign and state its subordinate. Theoretically, Self rule presupposes free from all encumbrances of the state i.e. complete freedom from hegemonic institutions. So freedom should consist in conversion of the State from an organ superimposed on society into one completely subordinated to it. The forms of the state are more free or less free to the extent that they restrict the "freedom" of the State. If the State is taken as the continuous administrative, legal, bureaucratic and coercive systems that attempt not only to structure relationships between civil society and public authority in a polity, but also to structure many crucial relationships within civil society itself, that means that a historical legal-juridical structure has taken upon itself those functions which legitimately belong to those who are sovereign i.e. people. This modified Weberian approach to state functions lacks the understanding of the peoples' long drawn struggles over many decades and centuries. People don't give their blood simply to handover the powers to an institution, which subjugates them. That is why people create political parties through which they rule over every institution of the state as the political parties, representing various interests, govern people and control various organs of the state, it is imperative that political institutions are democratized through check and balances. There should be inbuilt mechanism to check the bureaucratic tendencies of political parties. The bureaucracy, professionalism in political parties, non accountability, amassing of wealth, naked power to browbeat anyone of not their liking are some of the ills

besetting today's political parties who in the name of democracy crush every dissent. That is why it is important that the political power should only lie with the people and not with their political masters as the people are sovereign and not political parties.

Many political thinkers and past conflict resolutions are testimony to the fact that national sovereignty is not that sacred cow and if peoples' struggles demand so sovereignty and state can be deconstructed.

According to Giden Gottlieb, there can be either juridical or territorial approaches to solve national and ethnic problems, which he calls states-plus-nations. The central approach is "deconstruction of sovereignty" into people and sovereignty as power over territory. The first kind Gottlieb designates a new "space" in the international system. This new space, he says, involves the conscious enlargement or "extension of the formal system of states to include alongside it a system of nations and peoples that are organized territorially into independent states". This can be accomplished, he claims, without undermining the integrity of existing states. "The international legal community can be broadened beyond states and international organizations", he asserts. What it implies is that if the confrontation between juridical states and national self determination movements is to be resolved there is a compelling case for a radical restructuring and democratization of unitary states. There is a need for rethinking of the prevailing conceptualizations of categories like state, nation and sovereignty, the small reflection of which can be seen, in what follows, what were earlier conflict zones.

In Britain, Scotland has its own parliament; Welsh and Northern Ireland have their own Assemblies. Scotland merged with Britain about two hundred years back, the case of Northern Ireland is a recent history where bloody war between Protestants and Catholics (due to the perceived hegemony of mainland Catholics) ultimately resulted in autonomy for Northern Ireland. Likewise, in case of South Tyrol, Italy negotiated a detailed package first with Austria. South Tyrol's Peoples' Party, representing 90 % of the people accepted it. Italy and Austria agreed on this issue in 1969. Then two states noti-

fied to the U.N. in 1992 the closure of South Tyrol dispute and signed it. South Tyrol acquired in 1972 a good Autonomy Law promulgated by President of Italy. U.K and Ireland signed in 1999 a treaty setting up a North-South Ministerial Council for the disputed subjects as a consultative body. Sweden and Finland submitted to the League of Nations' Council Meeting in 1921 an accord on settlement of the dispute on Aaland Islands overwhelmingly Swedish, they would remain under Finland's sovereignty but with guaranteed autonomy which was broadly defined.

When the people assert their consciousness on being discriminated and exploited and if the problem of people is linked to a historical dispute, the overall solution which may satisfy all contending parties demands a new legal, constitutional approach, taking cue from the new settlements effecting the old warring parties but having a sanction in International law.

Suzerainty is a legal and constitutional category having a sanction in international law. For internally independent or fully autonomous regions suzerainty provides a legal framework. To accommodate the various political interests of contending parties, in both parts of Kashmir, joint suzerainty both of India and Pakistan is proposed. In this scheme of things India will not lose any territory and Pakistan will have the satisfaction of being a joint protectorate of Kashmir. People living in whole of J&K will be fully autonomous in every conceivable manner, whether it is political, economic, cultural or social. This suzerainty is somewhat analogous to British rule over princely states of pre-independent India, where only matters like defence, external relations with other countries and communication was with Britishers. Joint suzerainty does not mean that internally autonomous J&K will be a new colony of both India and Pakistan. Once a joint suzerainty is accepted, what internal autonomy will comprise is as follows.

Self Rule Cum Peoples' Power

When the general agreement is arrived at by all the contending parties of both sides, the present assemblies both parts of J&K State will be dissolved and a new Constituent Assembly for making new

laws applicable to whole of J&K State will be constituted. The laws passed by such Assembly will have applicability only after their ratification by the people through referendum. The nominations of members from Indian side of J&K will be under the supervision of the Indian state but the nominations from other part of Pakistan cannot be done by Pakistan as Pakistan till date has not accepted Azad Kashmir as its integral part. For legal and constitutional sanctity having a legal sanction in International Law Pakistan will have to have suzerainty rights over Azad Kashmir. That is why we have proposed joint suzerainty of both India and Pakistan over whole of J&K.

That way by declaring Pakistan having suzerain rights over Azad Kashmir it will have legal and constitutional entity for nominations of members from Azad Kashmir. The nomination of members for new constitutional Assembly will not be at the dictates of either of India and Pakistan for their respective areas. Nominations will be done by the present assemblies of their respective parts of J&K, giving due representation to all minorities and political parties to have their full say in making new laws and safeguarding the interests of all communities and social groups. Both suzerain powers will only give their formal consent to these nominations. They will have no dictatorial powers to reject any nominations. This new constitutional assembly will start the process of electing candidates for both houses i.e. lower and upper houses. Once the election process is over, the provincial candidates of every area will form sub assemblies or Regional Councils.

These provincial assemblies will be headed by Deputy Chief Ministers in rotation of 2 years (if Assembly term is of 6 years) giving representation to various minorities. Simultaneously, these provincial deputy Chief Ministers will elect their Chief Minister who will also be in rotation for two years thus giving representation to all regions of combined J&K State. Thus governance at provincial and state level will be of people in general and will not be of any elite group or class. People will have a sense of genuine representation as all poor, marginalized and minorities will have full representation. This new Assembly then will elect their own governor i.e. con-

stitutional head from its own people. This governor will have no powers to dismiss a duly elected government. In case there is a breakdown of constitution, the Assembly (both lower and upper houses) will itself advise the governor to dissolve the present assembly in case 3/4th 3/4th of members so decide. The governor will be bound to approve such decision of the Assembly. To have a new fair election there will not be caretaker government but instead the new elections will be held under governor rule, so that no group or party could influence the election process in its favour. The judges of the Courts will be nominated by the mutual agreement of all provincial assemblies in consultation with the Chief Justice of high Court and will be sent to governor for his Constitutional approval. Any judge could be impeached by 2/3rd majority of elected representatives if he/she violates the constitution and found corrupt. To check the malpractice and for impartiality in judiciary, judicial commission (comprising the learned and expert people from various fields will be elected by Assembly) having constitutional sanction for award of punishment to the erring judge. Accountability of elected representative and judges will be there who will declare their assets, every year, for public scrutiny. Likewise, Election Commissioners and other members of the Election Commission will be elected by respective Assemblies. The rotational governance, accountability and participation of every group and minorities will be a first step towards self rule. To further check bureaucracy and perpetuation of family rule the tenure of elected representative will be fixed i.e. no candidate can be an elected representative for more than two terms, with a provision of right to recall. The above provisions of governance will eliminate hegemony of any area on another area; representation to all classes; groups, minorities and regions; check on bureaucracy; check on professionalism in parties, check on corruption and accountability at all levels. Self-rule will be the sole rule of people living in whole of J&K at all levels. Rotational Governance and Fixation of Tenures of elected members will ensure broader participation of people of various shades in sharing governance, ensuring thereby elimination of factionalism which will in turn strengthen democracy. Only through the above mechanism of governance,

peoples' sovereignty over all organs of the state will be ensured and will be a genuine self rule i.e. peoples' rule.

FINANCES

The budget allocations of all the regions will be proportionately divided with no transfer of the funds from one region to another. This way all the regions will develop equally and will have no cause of concern to the people living in that region. As both parts of J&K State are heavily dependent upon the liberal financial grants of their present respective governments, it will be difficult to run J&K State on its own resources in the new setup. Towards this goal liberal grants, with less conditions will be provided by both of the Suzerain powers till the state becomes financially viable.

Secularism

The future set up of J&K will be strictly on the basis of secularism where the state will be equally distant from all religions, with no sponsorship for any religion, covert or overt. Economic relations with other countries will not be based upon any religion but strictly on state economic interests.

By this way the demand of Ladakhi people and Jammu people, who do not want to be absorbed or alienated in a coming Muslim majority state, will be taken care of automatically.

About the economic independence of the state, it has to be seen that being a landlocked state having few natural resources, it will be dependent upon India and Pakistan for its prosperity at least in the starting years of Self-Rule.

Lastly, in the scheme of Joint Suzerainty only three subjects i.e., Defense, Foreign affairs and Communications will be under the joint control of the two powers India and Pakistan and in the rest of the subjects J&K will be fully autonomous.

INTERVIEWS

1. Interview held with Azam Inqalabi at his Nageen Residence, Srinagar, on 19.10.2007

At the very beginning of the meeting he disclosed that he is a follower of Late Maqbool Bhat under whose guidance he learned ABC of politics. He lavished great praise for him being a great intellectual having given his life for Kashmir cause. According to him, he along with his followers, under the banner of Jammu & Kashmir Mahazi-Azadi, are continuing with Maqbool Bhat's legacy..

The main thrust of his argument was that all the disturbed areas of J&K, which according to him is, whole Valley of Kashmir, areas of Gilgit, Poonch, Rajouri, Doda, Kishtwar and Banihal of Jammu province i.e., all muslim majority areas of J&K should be declared independent. He choose to call the ongoing struggle as nationalist one but refused to elaborate what comprises his nationalism. He said that people of Jammu (except above areas) had already opted for India so is the case with people of Ladakh and according to him they do not form part of the ongoing struggle and so will remain outside the coming independent State.

On the specific question about the fate of Kashmiri Pandits in his scheme of independent Kashmir, he replied, they will not be allowed to have intellectual luxury to indulge in any other programme except independence for which they will be given their share in Legislative Assembly/parliament.

He narrated his experience of the Armed Struggle of which he was its first Chief (Mahaz-i-Azadi) having 54 militant organizations under his command. According to him, though he trained number of militants in armed insurgency he himself never killed a single person.

At the moment he believes in the futility of gun which was raised only due to the brutalities of the Indian State for not giving a chance to Kashmiri people for having their own elected leadership. He simultaneously warned that, if Indian State went on postponing the Kashmir issue, the armed militancy will rise again with a double force. He deprecated AL-Qaida type of movements and was emphatic that Kashmir will not be allowed to be a breeding ground for Muslim fanatics. He was constantly emphasizing about humanism and mysticism of peace loving people of Kashmir and disclosed that he himself is a great votary of pious saints in whose company he gets the maximum of mental peace and love for humanity.

At the very beginning of the meeting he disclosed that he is follower of Maqbool Bhat under whose guidance he learned ABC of politics. He lavished great praise for him being a great intellectual having given his life for Kashmir cause.

During the talk he also hinted that how he separated from Geelani and has a fond hope that one day Mirwaiz Umar Farooq may be the first Prime Minister of Independent Kashmir.

He is of small frame with amiable disposition but firm in his resolve. He joined Hurriyat in Jan. 2008

2. Abbas Ansari, Ex-Chairman Hurriyat (M) at his residence in Nawakadal, Srinagar, on 18th oct. 2007.

On our promptings he was kind enough to narrate his part of politics right from the start of his political career. According to him, when he came back from Iran in 1947, S.M. Abdullah asked him to join National Conference but he refused to do so. In 1960, he formed Ittehad-ul-Muslimeen with the banner "Live and let Live".

He remained in Jail for 11 years for his political activities. He was founder member of MUF which was formed in 1987. According to him MUF prepared the people for coming elections and fought on 41 seats. The main figures among those were, Mr Lone, Prof. Bhat, Mr Qazi Nisar and Syed Yousuf (now called Salau-ud-din). As per his version more than 20 MUF candidates were on the winning spree but due to the misdeeds of N.C with the support of Indian State election results were manipulated so that N.C. candidates can win. He said that Syed Yousuf and his election agent Mohd Yasin Malik along with their supporters were tortured by the local police. This according to him proved the last nail in the democratic credentials of the Indian State which ultimately resulted into the start of armed militancy in Kashmir. The present position and the philosophy of Mr. Ansari is that Kashmiri Muslim has used sword for their own protection and not for the destruction of other faiths. He says Mujahids do not loot anybody and are different from dacoits. Regarding the erstwhile leaders of Kashmir, he has some praise for Bakshi Ghulam Mohd, who according to him, initiated so many development works namely, Kashmir university and Engineering college in Srinagar. As per his present political position, he does not support the gun but believe in a meaningful dialogue. He praised Mr Vajpayee and Advani who initiated confidence building measures (CBM) with Pakistan. He said that present Indian government is also sincere in these CBMs but the local ruling class is putting lot of hurdles for which he gave the example of the formation of various committees at the behest of present local government of J&K. He said that these committees have been formed only to delay the dialogue process and instead there should be only bilateral and trilateral talks between the disputed parties only. When specifically asked to

spell out the road map of Hurriyat (M) in resolving Kashmir dispute and his own position on Kashmir, he replied "Baat -se- Baat Niklagee" (through dialogue everything will come out), meaning thereby that the process of dialogue will result in some solution i.e. logical dialogue is the answer. About his vision of Kashmir he said it will be fully democratic and secular one where every religion will have equal freedom. In this context he supported his own position by telling us that during the exodus of Kashmiri Pandits in 1990, which were according to him was the policy of Jagmohan, the then Governor of J&K, he did not allow the Kashmiri Pandits to leave Kashmir from his area.

3. Interview with Shabir Shah, President, Democratic Freedom Party, now a constituent of Hurriyat (M), held on 13.04.2008 at his residence Badshah colony, Sanat Nagar, Srinagar.

The interview was started with the request to give a review of his biography. He stated that he was forced to join politics by sheer circumstances prevailing at that time and at the very tender age of 9-10 years, he had his first detention. He remained about 19 years in different Jails and learned his politics during this period of his youth.

By Amnesty International, he was declared a prisoner of conscience and is fondly called Nelson Mandela of Kashmir.

Q: How do you address the Kashmir Problem?

Reply: Kashmir is a disputed one. By Kashmir I mean whole of J&K. The issue of Kashmir was taken to U.N.O by India for its arbitration. The U.N.O resolutions have asked for plebiscite which India never implemented -thus snatching the rights of people of J&K. The Government of India should restore us the right of Self determination in accordance to the various UNO resolutions and it will be peoples' will whether to opt for Pakistan or India. He said backwardness in development in both India and Pakistan is because of Kashmir issue. The expenditure made on defence should have been utilized on development works which would have made both the countries prosperous.

Q: If you perceive the Kashmir solution in terms of U.N.O resolutions, which stipulate only one option for people of J&K i.e. either to opt for Pakistan or for India, as there is no option available like Independence for J&K, don't you think those who talk in terms of 2nd option i.e. independence for J&K, are in opposition to the leadership of first option?

Reply: We have not withdrawn U.N.O resolutions and 18 resolutions have not been implemented by Indian Government. Right of Self Determination stands and our dialogue process is open and not conditional. It is matter of time as continued and meaningful dialogue will improve the things. He also said that he is not a politician.

Q : If you believe that the solution of Kashmir should be according to U.N.O Resolutions, it means you still believe in two nation theory.

Reply: I do not believe in two nation theory. He said he is a strong believer in the composite culture of J&K where both Muslims and non-Muslims should live in peace. He said J&K cannot be divided on the basis of religion. According to him there were many reasons for the partition of India which according to him is a past history and he does not want to repeat that history in what J&K is today.

Q: People of Jammu and Ladakh i.e. non Muslim people generally do not support what the two factions of Hurriyat or JKLF demands. Will you accede to the non Muslims of J&K the demand to have their home land or any other alternative which they believe is good for them? Or the non Muslims of J&K, who are in minority, have to toe the line of the majority Muslims?

Reply. It is true that generally non Muslims of Jammu and Ladakh do not support us. As far as giving home land to sub nationalities like Dogras, Kashmiri pandits, Ladakhis etc., I personally do not want division as it will repeat 1947(we should not divide on the basis of religion). He said that the minority communities should not feel insecure from Muslims. He said that all are equal and we are trying our best to involve all non Muslim communities for a complete solution of J&K, acceptable to all, irrespective of religion or region. Further elaborating, he said that his vision of Kashmir solution lies in the satisfaction of all the people/regions of the state and in the final solution of Kashmir problem no region should feel that they have been defeated / cheated.

Q: When you say there should be tripartite talks, will you allow the non-Muslims of Jammu and Ladakh to be part of tripartite talks?

Reply: He said that there should be tripartite talks among the three principle parties i.e. India, Pakistan and people of whole of J&K (including the part of J&K which is in Pakistan) He elaborated that the non Muslim Of J&K will be part of tripartite talks. He said that when Jammu & Ladakh are part of whole of J&K, the non Mus-

lims of these areas will form the part of the tripartite talks.

His room was decorated with various photographs of various leaders national and international; the prominent among them were the portraits of Maqbool Bhat and above all Mahatma Gandhi. When enquired that how portrait of Mahatma Gandhi is compatible with his struggle he without hesitation told us that Mahatma Gandhi is one of his inspirer as he never killed a single person and he never believed in the culture of the gun. When pressed further about his view of armed struggle in Kashmir, he said that youth of Kashmir wielded guns only when all the peaceful options available with them were exhausted by the Indian state. He concluded by saying that he is not a 'politician' but having a 'deewangee' for peoples' cause he entered politics.

List Of Appendices

Treaty At Leh

CLAIM OVER LADDAKH

(English translation of the Persian text of the treaty signed at Leh on second of Asuj 1899 Bikrami - September 1842 - between the Government of Maharajah Gulab Singh and the Government of Tibet.)

Whereas we the Officer, of the Lhasa country, viz., firstly, Kalon Surkhan, and secondly, Depon Pishi, commander of the forces of the Empire of China, on the one hand and Dewan Hari Chand and Wazir Ratanu, on behalf of Maharajah Gulab Singh, on the other, agree together and swear before God that the friendship between Maharajah Gulab Singh and the Emperor of China and the Lama Guru Sahib Lassawalla will be kept and observed till eternity: no disregard will be shown to anything agreed upon in the presence of God; and we will respect the boundary of Laddakh and the countries bordering on it as fixed since olden times. We will carry on the trade in Shawl, Pasham and Tea as before by way of Laddakh; and if anyone of the Shri Maharajah's enemies comes to our territories and says anything against the Rajah, we will not listen to him, and

will not allow him to remain in our country, and whatever traders come from Laddakh shall experience no difficulty from our side. We will not act otherwise but in the same manner as it has been prescribed in this meeting regarding the fixing of the Laddakh frontier and the keeping open of the road for the traffic in Shawl, Pasham and Tea. We will observe our pledge to God, Gaitri and Pasi, Wazir Mian Khushal Chu is witness.

Written on the second day of Asuj 1899 (September, 1842)

The Tibetan version of the treaty

Kalon Surkhan and investigating officer Depon Pishi on behalf of His Holiness the Dalai Lama and his officials, and Shri Khalsaji Absarani, Shri Maharajah, Lala Golana, the representative of Khashur Shag Golan Mohammed through an interpreter, Amirshah (on behalf of Gulab Singh) have arrived at Laddakh and discussed the terms of the peace treaty. In the first place the two contracting parties have decided to sink all past differences and ill-feeling and to consider the friendship and unity between the two kings re-established for ever. This peace treaty between Shri Maharajah Gulab Singh and Shri Guru Lama of Lhasa has been restored and there will be no cause for enmity in future in the two nations regarding their respective frontiers. Shri Maharajah Sahib has declared, invoking God as his witness, that he will not deviate from the terms of the agreement. It is agreed that the two brother kings of Laddakh and the Queen shall remain peacefully in Laddakh and shall not indulge in any intrigue, besides trying to promote the friendly relations between the two nations. The Laddakhis shall send the annual tribute to His Holiness the Dalai Lama and his Ministers unfailingly as heretofore and the Shri Maharajah Sahib will not interfere with this arrangement. No restriction shall be laid on the mutual export of commodities e.g., tea, piece goods, etc. and trading shall be allowed according to the old established custom. The Laddakhis shall supply the Tibetan Government traders with the usual transport animals and arrange for their accommodation as heretofore, and the Tibetans will also do the same to the Laddakhis who come to Tibet with the annual tribute. It is agreed that no trouble

will be occasioned to the Tibetan Government by the Laddakhis. We invoke God to bear witness to this agreement whereby the friendly relations between Shri Maharajah Sahib and the Lhasa Government shall continue as between members of the same family. This is signed on the second day of the month of Assuj, year 1899.

1. Treaty Of Amritsar

March 16, 1846

The treaty between the British Government on the one part and Maharajah Gulab Singh of Jammu on the other concluded on the part of the British Government by Frederick Currie, Esq. and Brever-Major Henry Montgomery Lawrence, acting under the orders of the Rt. Hon. Sir Henry Hardinge, G.C.B., one of her Britannic Majesty's most Honorable Privy Council, Governor-General of the possessions of the East India Company, to direct and control all the affairs in the East Indies and by Maharajah Gulab Singh in person - 1846.

Article 1

The British Government transfers and makes over for ever in independent possession to Maharajah Gulab Singh and the heirs male of his body all the hilly or mountainous country with its dependencies situated to the eastward of the River Indus and the westward of the River Ravi including Chamba and excluding Lahul, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846.

Article 2

The eastern boundary of the tract transferred by the foregoing article to Maharajah Gulab Singh shall be laid down by the Commissioners appointed by the British Government and Maharajah Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.

Article 3

In consideration of the transfer made to him and his heirs by the provisions of the foregoing article Maharajah Gulab Singh will pay to the British Government the sum of seventy-five lakhs of rupees (Nanukshahee), fifty lakhs to be paid on or before the 1st October of the current year, A.D., 1846.

Article 4

The limits of territories of Maharajah Gulab Singh shall not be at any time changed without concurrence of the British Government.

Article 5

Maharajah Gulab Singh will refer to the arbitration of the British Government any disputes or question that may arise between himself and the Government of Lahore or any other neighboring State, and will abide by the decision of the British Government.

Article 6

Maharajah Gulab Singh engages for himself and heirs to join, with the whole of his Military Forces, the British troops when employed within the hills or in the territories adjoining his possessions.

Article 7

Maharajah Gulab Singh engages never to take to retain in his service any British subject nor the subject of any European or American State without the consent of the British Government.

Article 8

Maharajah Gulab Singh engages to respect in regard to the

territory transferred to him, the provisions of Articles V, VI and VII of the separate Engagement between the British Government and the Lahore Durbar, dated 11th March, 1846.

Article 9

The British Government will give its aid to Maharajah Gulab Singh in protecting his territories from external enemies.

Article 10

Maharajah Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to the British Government one horse, twelve shawl goats of approved breed (six male and six female) and three pairs of Cashmere shawls.

This Treaty of ten articles has been this day settled by Frederick Currie, Esq. and Brever-Major Henry Montgomery Lawrence, acting under directions of the Rt. Hon. Sir Henry Hardinge, Governor-General, on the part of the British Government and by Maharajah Gulab Singh in person, and the said Treaty has been this day ratified by the seal of the Rt. Hon. Sir Henry Hardinge, Governor-General. (Done at Amritsar the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-six, corresponding with the seventeenth day of Rubee-ul-Awal (1262 Hijree).

(Signed) H. Hardinge (Seal)

(Signed) F. Currie

(Signed) H.M. Lawrence

2. Letter Of Hari Singh

Letter from Maharaja Hari Singh to Lord Mountbatten on the eve of Pak invasion on J&K in 1947

My dear Lord Mountbatten,

I have to inform Your Excellency that a grave emergency has arisen in my State and request the immediate assistance of your Government. As Your Excellency is aware, the State of Jammu and Kashmir has not acceded to either the Dominion of India or Pakistan. Geographically my State is contiguous with both of them. Besides, my State has a common boundary with the Union of Soviet Socialist Republics and with China. In their external relations the Dominion of India and Pakistan cannot ignore this fact. I wanted to take time to decide to which Dominion I should accede or whether it is not in the best interests of both the Dominions and of my State to stand independent, of course with friendly and cordial relations with both. I accordingly approached the Dominions of India and Pakistan to enter into standstill agreement with my State. The Pakistan Government accepted this arrangement. The Dominion of India desired further discussion with representatives of my Government. I could not arrange this in view of the developments indicated below. In fact the Pakistan Government under the standstill agree-

ment is operating the post and telegraph system inside the State. Though we have got a standstill agreement with the Pakistan Government, the Government permitted a steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed to infiltrate into the State, at first in the Poonch area, then from Sialkot and finally in a mass in the area adjoining-Hazara district on the Ramkote side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at several points simultaneously, so that it has become difficult to stop the wanton destruction of life and property and the looting of the Mahura power house, which supplies electric current to the whole of Srinagar and which has been burnt. The number of women who have been kidnapped and raped makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer capital of my government, as a first step to overrunning the whole State. The mass infiltration of tribesmen drawn from distant areas of the North-West Frontier Province, coming regularly in motor-trucks, using the Manwehra-Mazaffarabad road and fully armed with up-to-date weapons, cannot possibly be done without the knowledge of the Provincial Government of the North-West Frontier Province and the Government of Pakistan. In spite of repeated appeals made by my Government no attempt has been made to check these raiders or to stop them from coming into my State. In fact, both radio and the Press of Pakistan have reported these occurrences. The Pakistan radio even put out the story that a provisional government has been set up in Kashmir. The people of my State, both Muslims and non-Muslims, generally have taken no part at all.

With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so, and I attach the instrument of accession for acceptance by your Government. The other alternative is to leave my state and people to free booters. On this

basis no civilised government can exist or be maintained.

This alternative I will never allow to happen so long as I am the ruler of the State and I have life to defend my country. I may also inform your Excellency's Government that it is my intention at once to set up an interim government and to ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State is to be saved, immediate assistance must be available at Srinagar. Mr. V.P. Menon is fully aware of the gravity of the situation and will explain it to you, if further explanation is needed.

In haste and with kindest regards,

Yours sincerely,

Hari Singh

October 26, 1947

Reply from Lord Mountbatten to Maharaja Hari Singh

My dear Maharaja Sahib,

Your Highness' letter dated 26 October 1947 has been delivered to me by Mr. V.P. Menon. In the circumstances mentioned by Your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. In consistence with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people.

Meanwhile, in response to Your Highness' appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir, to help your own forces to defend your territory and to protect the lives, property, and honour of your people. My Government and I note with satisfaction that Your Highness has decided to invite Sheikh Abdullah to form an interim Government to work with your Prime Minister.

Mountbatten of Burma

October 27, 1947

3. Instrument Of Accession:

Original Photostat Copy

INSTRUMENT OF ACCESSION OF JAMMU & KASHMIR STATE

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may by order specify be applicable to the Dominion of India;

And whereas the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:

NOW THEREFORE

I, Jehum Indar Bahadur Maharaja of the State of Jammu & Kashmir
Ruler of JAMMU & KASHMIR STATE do hereby execute
in the exercise of my sovereignty in and over my said State this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of JAMMU & KASHMIR (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August 1947 (which Act as so in force is hereinafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable there-in by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947 unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to enter my discretion to enter into arrangements with the Government of India under any such future constitution.

2

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of OCTOBER
Nineteen hundred and forty seven.

Jehum Indar Bahadur Maharaja
Ruler of JAMMU & KASHMIR STATE

I do hereby accept this Instrument of Accession.
Dated this 26th day of OCTOBER, Nineteen hundred and forty seven.

Lord Mountbatten of Burma
(Governor-General of India)

Text Of Instrument Of Accession

INSTRUMENT OF ACCESSION

Instrument of Accession executed by Maharajah Hari Singh on
October 26, 1947

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act 1935, shall with such omissions, additions, adaptations and modifications as the Governor General may by order specify, be applicable to the Dominion of India.

And whereas the Government of India Act, 1935, as so adapted by the Governor General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.

Now, therefore, I Shriman Inder Mahinder Rajrajeswar Maharajadhiraj Shri Hari Singhji, Jammu & Kashmir Naresh Tatha Tibbet adi Deshadhipati, Ruler of Jammu & Kashmir State, in the exercise of my Sovereignty in and over my said State do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu & Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August 1947, (which Act as so in force is hereafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make law for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of the State, then any such agreement shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence

Act, 1947, unless such amendment is accepted by me by Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense, or, if the land belongs to me transfer it to them on such terms as may be agreed or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future constitution of India or to fetter my discretion to enter into agreement with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my Sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October, nineteen hundred and forty seven.

Hari Singh

Maharajadhiraj of Jammu and Kashmir State.

ACCEPTANCE OF ACCESSION BY THE GOVERNOR GENERAL OF INDIA

I do hereby accept this Instrument of Accession. Dated this twenty seventh day of October, nineteen hundred and forty seven.

Mountbatten of Burma
Governor General of India.

SCHEDULE OF INSTRUMENT OF ACCESSION

THE MATTERS WITH RESPECT TO WHICH THE DOMINION

LEGISLATURE MAY MAKE LAWS FOR THIS STATE

A. Defence

1. The naval, military and air forces of the Dominion and any other armed forces raised or maintained by the Dominion; any armed forces, including forces raised or maintained by an acceding State, which are attached to, or operating with, any of the armed forces of the Dominion.

2. Naval, military and air force works, administration of cantonment areas.

3. Arms, fire-arms, ammunition.

4. Explosives.

B. External Affairs

1. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's Dominions outside India.

2. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India or subjects of any acceding State; pilgrimages to places beyond India.

3. Naturalisation.

C. Communications

1. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication.

2. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and services terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

3. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

4. Port quarantine.

5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

6. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

7. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

8. Carriage of passengers and goods by sea or by air.

9. Extension of the powers and jurisdiction of members of the police force belonging to any unit to railway area outside that unit.

D. Ancillary

1. Election to the Dominion Legislature, subject to the provisions of the Act and of any Order made thereunder.

2. Offences against laws with respect to any of the aforesaid matters.

3. Inquiries and statistics for the purposes of any of the aforesaid matters.

4. Jurisdiction and powers of all courts with respect to any of the aforesaid matters but, except with the consent of the Ruler of the

acceding State, not so as to confer any jurisdiction or powers upon any courts other than courts ordinarily exercising jurisdiction in or in relation to that State.

Speech of Sheikh Mohammad Abdullah in the State Constituent Assembly

We must remember that our struggle for power has now reached its successful climax in convening of this Constituent Assembly. It is for you to translate the vision of New Kashmir into a reality, and I would remind you of its opening words, which will inspire our labors:

"We the people of Jammu & Kashmir, Ladakh and the Frontier regions, including Poonch and Chenani Illaqs commonly known as Jammu and Kashmir State in order to perfect our union in the fullest equality and self-determination to raise ourselves and our children forever from the abyss of oppression and poverty, degradation and superstition, from medieval darkness and ignorance, into the sunlit valleys of plenty, ruled by freedom, science and honest toil, in worthy participation of the historic resurgence of the peoples of East, and the working masses of the world, and in determination to make this our country a dazzling gem on the snowy bosom of Asia, to propose and propound the following constitution of our State.'

This was passed at the 1944 session of the National Conference in Srinagar. Today, in 1951, embodying aspirations, men and women from the four corners of the state in this Constituent Assembly have become the repository of its sovereign authority. This Assembly, invested with the authority of a constituent body, will be the fountain-head of basic laws laying the foundation of a just social order and safeguarding the democratic rights of all the citizens of the State.

You are the sovereign authority in this State of Jammu and Kashmir; what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation embodied ably in the American and French Constitutions, is once again given shape in our midst. I shall quote the famous words of Article 3 of the French Constitution of 1791:

"The source of all sovereignty resides fundamentally in the nation...Sovereignty is one and indivisible, inalienable and

imprescriptable. It belongs to the nation."

We should be clear about the responsibilities that this power invests us with. In front of us lie decisions of the highest national importance which we shall be called upon to take. Upon the correctness of our decisions depends not only the happiness of our land and people now, but the fate as well of generations to come.

What then are the main functions that this Assembly will be called upon to perform?

One great task before this Assembly will be to devise a Constitution for the future governance of the country. Constitution-making is a difficult and detailed matter. I shall only refer to some of the broad aspects of the Constitution, which should be the product of the labors of this Assembly.

Another issue of vital import to the nation involves the future of the Royal Dynasty. Our decision will have to be taken both with urgency and wisdom, for on that decision rests the future form and character of the State.

The Third major issue awaiting your deliberations arises out of the Land Reforms which the Government carried out with vigor and determination. Our "Land to the tiller" policy brought light into the dark homes of the peasantry; but, side by side, it has given rise to the problem of the landowners demand for compensation. The nation being the ultimate custodian of all wealth and resources, the representatives of the nation are truly the best jury for giving a just and final verdict on such claims. So in your hands lies the power of this decision.

Finally, this Assembly will after full consideration of the three alternatives that I shall state later, declare its reasoned conclusion regarding accession. This will help us to canalize our energies resolutely and with greater zeal in directions in which we have already started moving for the social and economic advancement of our country.

To take our first task, that of Constitution-making, we shall naturally be guided by the highest principles of the democratic con-

stitutions of the world. We shall base our work on the principles of equality, liberty and social justice which are an integral feature of all progressive constitutions. The rule of law as understood in the democratic countries of the world should be the cornerstone of our political structure. Equality before the law and the independence of the judiciary from the influence of the Executive are vital to us. The freedom of the individual in the matter of speech, movement and association should be guaranteed: freedom of the press and of opinion should also be features of our Constitution. I need not refer in great detail to all those rights and obligations, already embodied in New Kashmir, which are integral parts of democracy which has been defined as 'an apparatus of social organization wherein people govern through their chosen representatives and are themselves guaranteed political and civil liberties'.

You are no doubt aware of the scope of our present constitutional ties with India. We are proud to have our bonds with India, the goodwill of those people and government is available to us in unstinted and abundant measure. The Constitution of India has provided for a federal union and in the distribution of sovereign powers has treated us differently from other constituent units. With the exception of the items grouped under Defense Foreign Affairs and Communications in the instrument of Accession, we have complete freedom to frame our Constitution in the manner we like. In order to live and prosper as good partners in a common endeavor for the advancement of our peoples, I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genius of our people, we may also by suitable constitutional arrangements with the Union establish our right to seek and compel Federal cooperation and assistance in this great task, as well as offer our fullest cooperation and assistance to the Union.

Whereas it would be easy for you to devise a document calculated to create a frame work of law and order, as also a survey of the duties and rights of citizens. It will need more arduous labor to take concrete decisions with regard to the manner in which we propose to bring about the rapid economic development of the State and

more equitable distribution of our national income among the people to which we are pledged. Our National Conference avows its faith in the principal that there is one thing common to men of all castes and creeds, and that is their humanity. That being so, the one ailment which is ruthlessly sapping the vitality of human beings in Jammu & Kashmir is their appalling poverty, and if, we merely safeguard their political freedom in solemn terms, it will not affect their lives materially unless it guarantees them economic and social justice. New Kashmir contains a statement of the objectives of our social policy. It gives broadly a picture of the kind of life that we hope to make possible for the people of Jammu & Kashmir and the manner in which the economic organization of the country will be geared to that purpose. These ideals you will have to integrate with the political structure which you will devise.

The future political set-up which you decide upon for Jammu & Kashmir must also take into consideration the existence of various sub-national groups in our State. Although culturally diverse history has forged an uncommon unity between them; they all are pulsating with the same hopes and aspirations, sharing in each others joys and sorrows. While guaranteeing this basic unity of the State, our constitution must not permit the concentration of power and privilege in the hands of any particular group or territorial region. It must afford the fullest possibilities to each of these groups to grow and flourish in conformity with their cultural characteristics without detriment to the integral unity of the State or the requirements of our social and economic policies.

Now let us take up an issue of basic importance which involves the fundamental character of the State itself. As an instrument of the will of a self-determining people who now become sovereign in their own right, the Constituent Assembly will now re-examine and decide upon the future of the present ruling dynasty, in respect of its authority.

It is clear that this dynasty can no longer exercise authority on the basis of an old discredited Treaty. During my trial for sedition in the "Quit Kashmir" movement, I had clarified the attitude of my

party when I said:

"The future constitutional set-up in the State of Jammu & Kashmir cannot derive authority from the old source of relationship which was expiring and was bound to end soon. The set-up could only rest on the active will of the people of the State, conferring on the head of the State the title and authority drawn from the true and abiding source of sovereignty, that is the people."

On this occasion, in 1946, I had also indicated the basis on which an individual could be entrusted by the people with the symbolic authority of a Constitutional Head:

"The State and its Head represent the constitutional circumference and the center of this sovereignty respectively, the Head of the State being the symbol of the authority with which the people may invest him for the realization of their aspirations and the maintenance of their rights".

In consonance with these principles, and in supreme fulfillment of the people's aspirations, it follows that a Constitutional Head of the State will have to be chosen to exercise the function which this Assembly may chose to entrust to him.

So far as my Party is concerned, we are convinced that the institution of monarchy is incompatible with the spirit and needs of modern times which demand an egalitarian relationship between one citizen and another. The supreme test of a democracy is the measure of equality of opportunity that it affords to its citizens to rise to the highest point of authority and position. In consequence monarchies are fast disappearing from the world picture, as something in the nature of feudal anachronisms. In India, too, where before the partition, six hundred and odd Princes exercised rights and privileges of rulership, the process of democratization has been taken up and at present hardly ten of them exercise the limited authority of constitutional heads of States.

After the attainment of complete power by the people, it would have been an appropriate gesture of good will to recognize Maharaja Hari Singh as the first constitutional Head of the State. But I

must say with regret that he has completely forfeited the confidence of every section of the people. His incapacity to adjust himself to changed conditions and his antiquated views on vital problems constitute positive disqualifications for him to hold the high office of a democratic Head of the State. Moreover, his past actions as a ruler have proved that he is not capable of conducting himself with dignity, responsibility and impartiality. The people still remember with pain and regret his failure to stand by them in times of crisis, and his incapacity to afford protection to a section of his people in Jammu.

Finally we come to the issue which has made Kashmir an object of world interest, and has brought her before the forum of the United Nations. This simple issue has become so involved that people have begun to ask themselves after three and a half years of tense expectancy. "Is there any solution?" Our answer is in the affirmative. Everything hinges round the genuineness of the will to find a solution. If we face the issue straight, the solution is simple.

The problem may be posed in this way. Firstly, was Pakistan's action in invading Kashmir in 1947 morally and legally correct, judged by any norm of international behavior? Sir Owen Dixon's verdict on this issue is perfectly plain. In unambiguous terms he declared Pakistan an aggressor. Secondly, was the Maharajah's accession to India legally valid or not? The legality of the accession has not been seriously questioned by any responsible or independent person or authority.

These two answers are obviously correct. Then where is the justification of treating India and Pakistan at par in matters pertaining to Kashmir? In fact, the force of logic dictates the conclusion that the aggressor should withdraw his armed forces, and the United Nations should see that Pakistan gets out of the State.

In that event, India herself, anxious to give the people of the State a chance to express their will freely, would willingly cooperate with any sound plan of demilitarization. They would withdraw their forces, only garrisoning enough posts to ensure against any repetition of that earlier treacherous attack from Pakistan.

These two steps would have gone a long way to bring about a new atmosphere in the State. The rehabilitation of displaced people, and the restoration of stable civic conditions would have allowed people to express their will and take the ultimate decision.

We as a Government are keen to let our people decide the future of our land in accordance with their own wishes. If these three preliminary processes were accomplished, we should be happy to have the assistance of international observers to ensure fair play and the requisite conditions for a free choice by the people.

Instead invader and defender have been put on the same plane. Under various garbs, attempts have been made to sidetrack the main issue. Sometimes against all our ideals of life and way of living attempts divide our territories have been made in the form of separation of our state religionwise, with ultimate plans of further disrupting territorial integrity. Once an offer was made to police our country with Commonwealth forces, which threatens to bring in Imperial control by the back door. Besides the repugnance which our people have however, to the idea of bringing foreign troops on their soil, the very presence of Commonwealth troops could have created suspicions among our neighbors that we were allowing ourselves to be used as a base of possible future aggression against them. This could easily have made us into a second Korea.

The Cabinet Mission Plan has provided for three courses which may be followed by the Indian States when determining future affiliations. A State can either accede to India or accede to Pakistan, but failing to do either, it still can claim the right to remain independent. These three alternatives are naturally open to our State. While the intention of the British Government was to secure the privileges of the Princes, the representatives of the people must have the primary consideration of promoting the greatest good of the common people. Whatever steps they take must contribute to the growth of a democratic social order wherein all invidious distinctions between groups and creeds are absent. Judged by this supreme considerations, what are the advantages and disadvantages of our State's accession to either India or Pakistan or of having an independent Status.

As a realist I am conscious that nothing is all black or all white, and there are many facts to each of the propositions before us. I shall first speak on the merits and demerits of the State's accession to India. In the final analysis, as I understand it, it is the kinship of ideals which determines the strength of ties between two States. The Indian National Congress has consistently supported the cause of the State's peoples' freedom. The autocratic rule of the Princes has been done away with and representative government have been entrusted with the administration. Steps towards democratization have been taken and these have raised the people's standard of living, brought about much-needed social reconstruction, and above all built up their very independence of spirit. Naturally, if we accede to India there is no danger of a revival of feudalism and autocracy. Moreover, during the last four years the Government of India has never tried to interfere in our internal autonomy this experience has strengthened our confidence in them as a democratic State.

The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all without distinction. This is the bedrock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of the population are Hindus. Any unnatural cleavage between religious groups is the legacy of Imperialism, and no modern State can afford to encourage artificial division if it is to achieve progress and prosperity. The Indian Constitution has amply and finally repudiated the concept of a religious State, which is a throw back to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, color caste and class.

The national movement in our State naturally gravitates towards these principles of secular democracy. The people here will never accept a principle which seeks to favor the interests of one religion or social group against another. This affinity in political principles, as well as in past association, and our common path of suffering in the cause of freedom, must be weighed properly while deciding the future of the State.

We are also intimately concerned with the economic wellbeing of the people of this State. As I said before while referring to constitution-building, political ideals are often meaningless unless linked with economic plans. As a State, we are concerned mainly with agriculture and trade. As you know, and I have detailed before, we have been able to put through our "land to the tiller" legislation and make of it a practical success. Land and all it means is an inestimable blessing to our peasants who have dragged along in servitude to the landlord and his allies for centuries without number. We have been able under present conditions to carry these reforms through, are we sure that in alliance with landlord-ridden Pakistan, with so many feudal privileges intact, that the economic reforms of ours will be tolerated. We have already heard that news of our Land Reforms has traveled to the peasants of the enemy-occupied area of our State, who vainly desire like status, and like benefits. In the second place, our economic welfare is bound up with our arts and crafts. The traditional markets for these precious goods for which we are justly known all over the world, have been centered in India. The volume of our trade, in spite of the dislocation of the last few years, shows this. Industry is also highly important to us. Potentially we are rich in minerals, and in the raw materials of industry; we need help to develop our resources. India, being more highly industrialized than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing. Many goods also which it would not be practical for us to produce here for instance sugar, cotton, cloth, and other essential commodities, can be got by us in large quantities from India. It is around the efficient supply of such basic necessities that the standard of the man in-the-street depends.

I shall refer now to the alleged disadvantages of accession to India.

To begin with, although the land frontiers of India and Kashmir are contiguous, an all-weather road-link as dependable as the one we have with Pakistan does not exist. This must necessarily hamper trade and commerce to some extent particularly during the snowy winter months. But we have studied this question, and, with

improvements in modern engineering, if the State wishes to remain with India the establishment of an all-weather stable system of communication is both feasible and easy. Similarly, the use of the State rivers as a means of timber transport is impossible if we turn to India, except in Jammu where the river Chenab still carries logs to the plains. In reply to this argument, it may be pointed out that accession to India will open up possibilities of utilizing our forest wealth for industrial purposes and that, instead of lumber, finished goods, which will provide work for our carpenters and laborers, can be exported to India where there is a ready market for them. Indeed in the presence of our fleets of timber carrying trucks, river-transport is a crude system which inflicts a loss of some 20% to 35%, in transit.

Still another factor has to be taken into consideration. Certain tendencies have been asserting themselves in India which may in the future convert it into a religious State wherein the interests of Muslims will be jeopardized. This would happen if a communal organization had a dominant hand in the Government, and Congress ideals of the equality of all communities were made to give way to religious intolerance. The continued accession of Kashmir to India should, however, help in defeating this tendency. From my experience of the last four years, it is my considered judgment that the presence of Kashmir in the Union of India has been the major factor in establishing relations between the Hindus and Muslims of India. Gandhiji was not wrong when he uttered words before his death which paraphrase, "I lift up mine eyes into the hills, from whence cometh my help."

As I have said before, we must consider the question of accession with all open mind, and not let our personal prejudices stand in the way of a balanced judgment. I will now invite you to evaluate the alternative of accession to Pakistan.

The most powerful argument which can be advanced in her favor is that Pakistan is a Muslim State, and, big majority of our people being Muslims the State must accede to Pakistan. This claim of being a Muslim State is of course only a camouflage. It is a screen to dupe the common man, so that he may not see clearly that Paki-

stan is a feudal State in which a clique is trying by these methods to maintain itself in power. In addition to this, the appeal to religion constitutes a sentimental and a wrong approach to the question. Sentiment has its own place in life but often it leads to irrational action. Some argue, as supposedly natural corollary to this, that on our acceding to Pakistan our annihilation or survival depends. Facts have disproved this, right-thinking men would point out that Pakistan is not an organic unity of all the Muslims in this sub-continent. It has on the contrary, caused the dispersion of the Indian Muslims for whose benefit it was claimed to have been created. There are two Pakistans at least a thousand miles apart from each other. The total population of Western Pakistan which is contiguous to our State, is hardly 15 million. While the total number of Muslims, resident in India is as many as 40 million. As one Muslim is as good as another, the Kashmiri Muslims if they are worried by such considerations should choose the forty millions living in India.

Looking at the matter too from a more modern political angle religious affinities alone do not and should not normally determine the political alliance of States. We do not find a Christian bloc, a Buddhist bloc, or even a Muslim bloc, about which there is so much talk nowadays in Pakistan. These days economic interests and a community of political ideals more appropriately influence the policies of States.

We have another important factor to consider, if the State decides to make this the predominant consideration. What will be the fate of the one million non-Muslims now in our State? As things stand at present, there is no place for them in Pakistan. Any solution which will result in the displacement or the total subjugation of such a large number of people will not be just or fair, and it is the responsibility of this House to ensure that the decision that it takes on accession does not militate against the interests of any religious group.

As regards the economic advantages. I have mentioned before the road and river links with Pakistan. In the last analysis, we must however remember that we are not concerned only with the move-

ment of people but also with the movement of goods and the linking up of markets. In Pakistan there is a chronic dearth of markets for our products. Neither, for that matter, can she help us with our industrialization, being herself industrially backward.

On the debit side we have to take into account the reactionary character of her politics and State policies. In Pakistan we should remember that the lot of the States' subjects has not changed and they are still helpless and under the heel of their Rulers, who wield the same unbridled power under which we used to suffer here. This clearly runs counter to our own aspirations for freedom.

Another big obstacle to a dispassionate evaluation of her policies is the lack of a constitution in Pakistan. As it stands at present, this State enjoys the unique position of being governed by a Constitution enacted by an outside Parliament which gives no idea whatsoever of the future shape of civic and social relations. It is reasonable to argue that Pakistan cannot have the confidence of a freedom-loving and democratic people when it has failed to guarantee even fundamental rights of its citizens. The right of self-determination for nationalities is being consistently denied and those who fought against Imperialism for this just right are being suppressed with force. We should remember Badshah Khan and his comrades who laid down their all for freedom, also Khan Abdus Samad Khan and other fighters, in Baluchistan. Our national movement in the State considers this right of self-determination inalienable, and no advantage, however great, will persuade our people to forego it.

The third course open to us has still to be discussed. We have to consider the alternative of making ourselves an Eastern Switzerland, of keeping aloof from both States but having friendly relations with them. This might seem attractive in that it would appear to pave the way out of the present deadlock. To us as a tourist country it could also have certain obvious advantages, but in considering independence we must not ignore practical considerations. Firstly, it is not easy to protect sovereignty and independence in a small country which has not sufficient strength to defend itself on our long and difficult frontiers bordering so many countries. Secondly

we must have the goodwill of all our neighbors. Can we find powerful guarantors among them to pull together always in assuring us freedom from aggression? I would like to remind you that from August 15 to October 22, 1947 our State was independent and the result was that our weakness was exploited by the neighbor with invasion. What is the guarantee that in future too we may not be victims of a singular aggression.

I have now put the pros and cons of the three alternatives before you. It should not be difficult for men of discrimination and patriotism gathered in this Assembly to weigh all these in the scales of our national good and pronounce the well being of the country lies in the future.

U.N. Resolutions

1. Resolution 38

Resolution 38 (1948)

Submitted by the Representative of Belgium and adopted by the Security

Council at its 229th meeting held on 17 January, 1948.

(Document No. S1651, dated the 17th January, 1948).

THE SECURITY COUNCIL

Having heard statements on the situation in Kashmir from representatives of the Governments of

India and Pakistan, Recognising the urgency of the situation. Taking note of the telegram addressed

on 6 January by its President to each of the parties and of their replies thereto; and in which they affirmed their intention to conform to the Charter of the United Nations.

1. Calls upon both the Government of India and the Government of Pakistan to take immediately all measures within their power (including public appeals to their people) calculated to improve the situation, and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation;

2. Further requests each of those Governments to inform the Council immediately of any material change in the situation which occurs or appears to either of them to be about to occur while the matter is under consideration by the Council, and consult with the Council thereon.

The Security Council voted on this Resolution on 17-1-48 with the following result:

In favour: Argentina, Belgium, Canada, China, Colombia, France, Syria, U.K. and U.S.A.

Against: None

Abstaining: Ukrainian S.S.R. and U.S.S.R.

Resolution 39

Resolution 39 (1948)

Submitted by the Representative of Belgium and adopted by the Security

Council at its 230th meeting held on 20 January, 1948.

(Document No. S/654, dated the 20th January, 1948).

THE SECURITY COUNCIL

Considering that it may investigate any dispute or any situation which might, by its continuance, endanger the maintenance of international peace and security, and that, in the existing state of affairs between India and Pakistan, such an investigation is a matter of urgency. Adopts the following resolution:

[A] A Commission of the Security Council is hereby established, composed of representatives of three Members of the United Nations, one to be selected by India, one to be selected by Pakistan, and the third to be designated by the two so selected. Each representative on the Commission shall be entitled to select his alternates and assistants.

[B] The Commission shall proceed to the spot as quickly as possible. It shall act under the authority of the Security Council and in accordance with the directions it may receive from it. It shall keep the Security Council currently informed of its activities and of the development of the situation. It shall report to the Security Council regularly, submitting its conclusions and proposals.

[C] The Commission is invested with a dual function;

(1) to investigate the facts pursuant to Article 34 of the Charter of the United Nations;

(2) to exercise, without interrupting the work of the Security Council, any mediatory influence likely to smooth away difficulties, to carry out the directions given to it by the Security Council; and to report how far the advice and directions, if any, of the Security Council

cil, have been carried out.

[D] The Commission shall perform the functions described in Clause C:

(1) in regard to the situation in the Jammu and Kashmir State set out in the letter of the Representative of India addressed to the President of the Security Council, dated 1 January 1948, and in the letter from the Minister of Foreign Affairs of Pakistan addressed to the Secretary-General, dated 15 January 1948; and

(2) in regard to other situations set out in the letter from the Minister of Foreign Affairs of Pakistan addressed to the Secretary-General, dated 15 January 1948, when the Security Council so directs.

[E] The Commission shall take its decision by majority vote. It shall determine its own procedure. It may allocate among its members, alternate members, their assistants, and its personnel such duties as may have to be fulfilled for the realisation of its mission and the reaching of its conclusions.

[F] The Commission, its members, alternate members, their assistants, and its personnel, shall be entitled to journey, separately or together, wherever the necessities of their task may require, and, in particular within those territories which are the theatre of the events of which the Security Council is seized.

[G] The Secretary-General shall furnish the Commission with such personnel and assistance as it may consider necessary.

The Security Council voted on this Resolution on 20-1-1948 with the following result:

In favour: Argentina, Belgium, Canada, China, Colombia, France, Syria, U.K., and U.S.A.

Against: None

Abstaining: Ukrainian S.S.R. and U.S.S.R.

Resolution : Document No. 667, 10 Feb 1948

*DRAFT RESOLUTION PRESENTED BY THE PRESIDENT

(CANADA) OF THE SECURITY COUNCIL AND THE RAPPORTEUR (BELGIUM) ON 6 FEBRUARY, 1948 (DOCUMENT NO. 667, DATED THE 10TH FEBRUARY, 1948)

THE SECURITY COUNCIL

1. *Having considered* the claims and allegations of India and Pakistan expresses the conviction that a peaceful settlement of the dispute about the accession of Jammu and Kashmir will best promote the interests of the peoples of Jammu and Kashmir of India, and of Pakistan.

2. *Considers* that it is urgent and important to stop acts of violence and hostility in Jammu and Kashmir and to decide the question of whether the State of Jammu and Kashmir shall accede to Pakistan or to India by the democratic method of a plebiscite to be held, as recognized by the parties, under the auspices of the United Nations to ensure complete impartiality.

3. *Believes* that the joint action of the Governments of India and Pakistan is required to carry out the purposes set forth below:

4. Alternative A

Takes note with satisfaction that both Governments, in seeking a solution by negotiation under the auspices of the Council, have agreed to cooperate with each other and with the Council in developing specific proposals, and, to this end, to apply the following principles which, in the opinion of the Council, should, among others, constitute the basis of a just settlement;

Alternative B

Appeals, therefore, to both parties, in seeking a solution by negotiation under the auspices of the Council, to cooperate with each other and with the Council in developing specific proposals and, to this end, to apply the following principles which, in the opinion of the Council, should, among others, constitute the basis of a just settlement;

a. Acts of violence and hostility must end.

b. The withdrawal and continued exclusion of all irregular

forces and armed individuals who have entered Jammu and Kashmir from outside must be brought about, each party using to that end all the influence at its disposal.

c. Regular armed forces in aid of the establishment and maintenance of order must be made available. In this connection the Governments should seek to ensure cooperation between their military forces to establish order and security until the question of accession shall have been determined by the plebiscite.

d. Regular armed forces must be withdrawn as soon as reestablishment of law and order permits.

e. After acts of violence and hostility have ceased, all citizens of the Jammu and Kashmir State, who had left on account of the recent disturbances, shall be invited and be free to return to their homes and to exercise all their rights without any restrictions on legitimate political activity. There shall be no victimization. All political prisoners should be released.

f. The conditions necessary for a free and fair plebiscite on the question of whether the State of Jammu and Kashmir shall accede to India or to Pakistan, including an interim administration which will command confidence and respect of the people of the State of Jammu and Kashmir must be established.

g. Such conditions include that the plebiscite must be organized, held and supervised under the authority of the Security Council at the earliest possible date.

*This draft resolution was considered by the Security Council on 10th and 11th February, 1948, but was not put to vote. Subsequently, a Joint Draft Resolution was introduced by the Representatives of Belgium, Canada, China, Columbia, United Kingdom and the United States of America and its amended version (Doc. No S/726) was adopted by the Security Council on 21-4-1948, vide Resolution No 47 (1948).

Resolution no 47 called Ceasefire Resolution

RESOLUTION 47 (1948) ON THE INDIA-PAKISTAN QUESTION SUBMITTED JOINTLY BY THE REPRESENTATIVES FOR

BELGIUM, CANADA, CHINA, COLUMBIA, THE UNITED KINGDOM AND UNITED STATES OF AMERICA AND ADOPTED BY THE SECURITY COUNCIL AT ITS 286TH MEETING HELD ON 21 APRIL, 1948. (DOCUMENT NO. S/726, DATED THE 21ST APRIL, 1948).

THE SECURITY COUNCIL

Having considered the complaint of the Government of India concerning the dispute over the State of Jammu and Kashmir, having heard the representative of India in support of that complaint and the reply and counter complaints of the representative of Pakistan,

Being strongly of opinion that the early restoration of peace and order in Jammu and Kashmir is essential and that India and Pakistan should do their utmost to bring about cessation of all fighting,

Noting with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan would be decided through the democratic method of a free and impartial plebiscite,

Considering that the continuation of the dispute is likely to endanger international peace and security,

Reaffirms its resolution 38 (1948) of 17 January 1948;

Resolves that the membership of the Commission established by its resolution 39 (1948) of 20 January 1948, shall be increased to five and shall include, in addition to the membership mentioned in that Resolution, representatives ofand ..., and that if the membership of the commission has not been completed within ten days from the date of the adoption of this resolution the President of the Council may designate such other Member or Members of the United Nations as are required to complete the membership of five;

Instructs the Commission to proceed at once to the Indian sub-continent and there place its good offices and mediation at the disposal of the Governments of India and Pakistan with a view to facilitating the taking of the necessary measures, both with respect to the restoration peace and order and to the holding of a plebiscite by

the two Governments, acting in co-operation with one another and with the Commission, and further instructs the Commission to keep the Council informed of the action taken under the resolution; and, to this end,

Recommends to the Governments of India and Pakistan the following measures as those which in the opinion of the Council and appropriate to bring about a cessation of the fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan.

A - RESTORATION OF PEACE AND ORDER

1. The Government of Pakistan should undertake to use its best endeavors:

a. To secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purposes of fighting, and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State;

b. To make known to all concerned that the measures indicated in this and the following paragraphs provide full freedom to all subjects of the State, regardless of creed, caste, or party, to express their views and to vote on the question of the accession of the State, and that therefore they should co-operate in the maintenance of peace and order.

2. The Government of India should:

a. When it is established to the satisfaction of the Commission set up in accordance with the Council's Resolution 39 (1948) that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective, put into operation in consultation with the Commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order;

b. Make known that the withdrawal is taking place in stages

and announce the completion of each stage;

c. When the Indian forces shall have been reduced to the minimum strength mentioned in (a) above, arrange in consultation with the Commission for the stationing of the remaining forces to be carried out in accordance with the following principles:

i. That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State;

ii. That as small a number as possible should be retained in forward areas;

iii. That any reserve of troops which may be included in the total strength should be located within their present base area.

3. The Government of India should agree that until such time as the plebiscite administration referred to below finds it necessary to exercise the powers of direction and supervision over the State forces and policy provided for in paragraph 8, they will be held in areas to be agreed upon with the Plebiscite Administrator.

4. After the plan referred to in paragraph 2(a) above has been put into operation, personnel recruited locally in each district should so far as possible be utilized for the reestablishment and maintenance of law and order with due regard to protection of minorities, subject to such additional requirements as may be specified by the Plebiscite Administration referred to in paragraph 7.

5. If these local forces should be found to be inadequate, the Commission, subject to the agreement of both the Government of India and the Government of Pakistan, should arrange for the use of such forces of either Dominion as it deems effective for the purpose of pacification.

B - PLEBISCITE

6. The Government of India should undertake to ensure that the Government of the State invite the major political groups to designate responsible representatives to share equitably and fully in the conduct of the administration at the ministerial level, while the plebiscite is being prepared and carried out.

7. The Government of India should undertake that there will be established in Jammu and Kashmir a Plebiscite Administration to hold a plebiscite as soon as possible on the question of the accession of the State to India or Pakistan.

8. The Government of India should undertake that there will be delegated by the State to the Plebiscite Administration such powers as the latter considers necessary for holding a fair and impartial plebiscite including, for that purpose only, the direction and supervision of the State forces and police.

9. The Government of India should at the request of the Plebiscite Administration, make available from the Indian forces such assistance as the Plebiscite Administration may require for the performance of its functions.

10.

a. The Government of India should agree that a nominee of the Secretary-General of the United Nations will be appointed to be the Plebiscite Administrator.

b. The Plebiscite Administrator, acting as an officer of the State of Jammu and Kashmir, should have authority to nominate the assistants and other subordinates and to draft regulations governing the Plebiscite. Such nominees should be formally appointed and such draft regulations should be formally promulgated by the State of Jammu and Kashmir.

c. The Government of India should undertake that the Government of Jammu and Kashmir will appoint fully qualified persons nominated by the Plebiscite Administrator to act as special magistrates within the State judicial system to hear cases which in the opinion of the Plebiscite Administrator have a serious bearing on the preparation and the conduct of a free and impartial plebiscite.

d. The terms of service of the Administrator should form the subject of a separate negotiation between the Secretary-General of the United Nations and the Government of India. The Administrator should fix the terms of service for his assistants and subordi-

nates.

e. The Administrator should have the right to communicate directly, with the Government of the State and with the Commission of the Security Council and, through the Commission, with the Security Council, with the Governments of India and Pakistan and with their representatives with the Commission. It would be his duty to bring to the notice of any or all of the foregoing (as he in his discretion may decide) any circumstances arising which may tend, in his opinion, to interfere with the freedom of the Plebiscite.

11. The Government of India should undertake to prevent and to give full support to the Administrator and his staff in preventing any threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite, and the government of India should publicly announce and should cause the Government of the State to announce this undertaking as an international obligation binding on all public authorities and officials in Jammu and Kashmir.

12. The Government of India should themselves and through the government of the State declare and make known that all subjects of the state of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of the accession of the State and that there will be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit.

13. The Government of India should use and should ensure that the Government of the State also use their best endeavor to effect the withdrawal from the State of all Indian nationals other than those who are normally resident therein or who on or since 15th August 1947 have entered it for a lawful purpose.

14. The Government of India should ensure that the Government of the State releases all political prisoners and take all possible steps so that:

a. all citizens of the State who have left it on account of disturbances are invited and are free to return to their homes and to exer-

cise their rights as such citizens;

b. there is no victimization;

c. minorities in all parts of the State are accorded adequate protection.

15. The Commission of the Security Council should at the end of the plebiscite certify to the Council whether the plebiscite has or has not been really free and impartial.

C-GENERAL PROVISIONS

16. The Governments of India and Pakistan should each be invited to nominate a representative to be attached to the Commission for such assistance as it may require in the performance of its task.

17. The Commission should establish in Jammu and Kashmir such observers as it may require of any of the proceedings in pursuance of the measures indicated in the foregoing paragraphs.

18. The Security Council Commission should carry out the tasks assigned to it herein.

* The Security Council voted on this Resolution on 20-1-1948 with the following result:-

In favor: **Argentina, **Canada, China, France, **Syria, U. K, and U. S. A

Against: None

Abstaining: **Belgium, **Columbia, **Ukrainian S. S. R. . and U. S. S. R.

** Non-permanent Members of the Security Council.

Resolution 51

*RESOLUTION 51 (1948) ON THE INDIA-PAKISTAN QUESTION SUBMITTED BY THE REPRESENTATIVE OF SYRIA AND ADOPTED BY THE SECURITY COUNCIL AT ITS 312TH MEETING HELD ON 3 JUNE, 1948 (DOCUMENT NO. S/819, DATED THE 3RD JUNE, 1948).

THE SECURITY COUNCIL

1. *Reaffirms* its resolutions 38 (1948) of 17 January, 39 (1948) of 20 January, and 47 (1948) of 21 April, 1948;

2. *Directs* the United Nations Commission for India and Pakistan to proceed without delay to the areas of dispute with a view to accomplishing in priority the duties assigned to it by the resolution 47 (1948),

3. *Directs* the Commission further to study and report to the Security Council when it considers appropriate on the matters raised in the letter of Foreign Minister of Pakistan, dated 15th January, 1948, in the order outlined in paragraph D of Council resolution 39 (1948).

*The Security Council voted on this Resolution on 3-6-1948 with the following result -

In favor: **Argentina **Belgium, **Canada, **Columbia, France, **Syria, U. K, and U.S.A

Against: none

Abstaining : China, Ukrainian S. S. R. and U. S. S. R.

** Non-permanent members of the Security Council

Document S/1100, 13 Aug. 1948

*RESOLUTION ADOPTED BY THE UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN ON 13 AUGUST 1948. (DOCUMENT NO. S/1100, PARA 75, DATED THE 9TH NOVEMBER, 1948)

THE UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN.

Having given careful consideration to the points of view expressed by the Representatives of India and Pakistan regarding the situation in the State of Jammu and Kashmir, and

Being of the opinion that the prompt cessation of hostilities and the coercion of conditions the continuance of which is likely to endanger international peace and security are essential to implementation of its endeavors to assist the Governments of India and Pakistan in effecting a final settlement of the situation.

Resolves to submit simultaneously to the Governments of India and Pakistan the following proposal

PART I

CEASE-FIRE ORDER

A. The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments.

B. The High Commands of Indian and Pakistan forces agreed to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir. (For the purpose of these proposals "forces under their control shall be considered to include all forces, organized and unorganized, fighting or participating in hostilities on their respective sides).

C. The Commanders-in-Chief of the Forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.

D. In its discretions and as the Commission may find practicable, the Commission will appoint military observers who under the authority of the Commission and with the co-operation of both Commands will supervise the observance of the cease-fire order.

E. The Government of India and the Government of Pakistan

agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favorable to the promotion of further negotiations.

PART II

TRUCE AGREEMENT

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both Governments accept the following principles as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion between their Representatives and the Commission.

A. (1) As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.

(2) The Government of Pakistan will use its best endeavor to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting.

(3) Pending a final solution the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission.

B. (1) When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in Part II A 2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of their forces from the State in stages to be agreed upon with the Commission

(2) Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian

Government will maintain within the lines existing at the moment of cease-fire the minimum strength of its forces which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.

(3) The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within their power to make it publicly known that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.

C. (1) Upon signature, the full text of the Truce Agreement or communiqué containing the principles thereof as agreed upon between the two Governments and the Commission, will be made public.

PART III

The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce Agreement both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

*The UNCIP unanimously adopted this Resolution on 13-8-1948.

Members of the Commission: Argentina, Belgium, Columbia, Czechoslovakia and U.S.A.

Document No.S/1196, 5 jan. 1949

*RESOLUTION ADOPTED AT THE MEETING OF THE UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN ON 5 JANUARY, 1949. (DOCUMENT NO. S/1196, PARA 15, DATED THE 10TH JANUARY, 1949)

THE UNITED NATIONS COMMISSION FOR INDIA AND

PAKISTAN,

Having received from the Governments of India and Pakistan in Communications, dated December 23 and December 25, 1948, respectively their acceptance of the following principles which are supplementary to the Commission's Resolution of August 13, 1948;

1. The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite;

2. A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in Parts I and II of the Commission's resolution of 13 August 1948, have been carried out and arrangements for the plebiscite have been completed;

3.

a. The Secretary-General of the United Nations will, in agreement with the Commission, nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed to office by the Government of Jammu and Kashmir.

b. The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organizing and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.

c. The Plebiscite Administrator shall have authority to appoint such staff or assistants and observers as he may require.

4.

a. After implementation of Parts I and II of the Commission's resolution of 13 August 1948, and when the Commission is satisfied that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine, in consultation with the Government of India, the final disposal of Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite.

b. As regards the territory referred to in A 2 of Part II of the

resolution of 13 August, final disposal of the armed forces in that territory will be determined by the Commission and the Plebiscite Administrator in consultation with the local authorities.

5. All civil and military authorities within the State and the principal political elements of the State will be required to co-operate with the Plebiscite Administrator in the preparation for and the holding of the plebiscite.

6.

a. All citizens of the State who have left it on account of the disturbances will be invited and be free to return and to exercise all their rights as such citizens. For the purpose of facilitating repatriation there shall be appointed two Commissions, one composed of nominees of India and the other of nominees of Pakistan.

The Commissions shall operate under the direction of the Plebiscite Administrator. The Governments of India and Pakistan and all authorities within the State of Jammu and Kashmir will collaborate with the Plebiscite Administrator in putting this provision to effect.

b. All persons (other than citizens of the State) who on or since 15 August 1947, have entered it for other than lawful purpose, shall be required to leave the State.

7. All authorities within the State of Jammu and Kashmir will undertake to ensure in collaboration with the Plebiscite Administrator that:

a. There is no threat, coercion or intimidation, bribery other undue influence on the voters in plebiscite;

b. No restrictions are placed on legitimate political activity throughout the State. All subjects of the State, regardless of creed, caste or party, shall be safe and free in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit;

c. All political prisoners are released;

d. Minorities in all parts of the State are accorded adequate protection; and

e. There is no victimization.

8. The Plebiscite Administrator may refer to the United Nations Commission for India and Pakistan problems on which he may require assistance, and the Commission may in its discretion call upon the Plebiscite Administrator to carry out on its behalf any of the responsibilities with which it has been entrusted;

9. At the conclusion of the plebiscite, the Plebiscite Administrator shall report the result thereof to the Commission and to the Government of Jammu and Kashmir. The Commission shall then certify to the Security Council whether the Plebiscite has or has not been free and impartial;

10. Upon the signature of the truce agreement the details of the foregoing proposals will be elaborated in the consultation envisaged in Part III of the Commission's resolution of 13 August 1948. The Plebiscite Administrator will be fully associated in these consultations;

Commends the Governments of India and Pakistan for their prompt action in ordering a cease-fire to take effect from one minute before midnight of first January 1949, pursuant to the agreement arrived at as provided for by the Commission's resolution of 13 August 1948; and

Resolves to return in the immediate future to the sub-continent to discharge the responsibilities imposed upon it by the resolution of 13 August 1948, and by the foregoing principles.

* UNCIP unanimously adopted this Resolution on 5-1-1949.

Members of the Commission: Argentina, Belgium, Columbia, Czechoslovakia and U.S.A.

Proposal of President of Security Council dtd. 22 Dec./ 1949

PROPOSAL IN RESPECT OF JAMMU AND KASHIR MADE BY GENERAL A.G.L. McNAUGHTON PRESIDENT OF THE SECURITY COUNCIL OF THE UNITED NATIONS, PURSUANT TO THE DECISION OF THE SECURITY COUNCIL TAKEN AT ITS 457TH MEETING, ON 22 DECEMBER, 1949.

1. The principal considerations underlying the following proposals of the President of the Security Council of the United Nations are:

a. To determine the future of Jammu and Kashmir by the democratic method of the free and impartial plebiscite, to take place as early as possible;

b. Thus to settle this issue between the Governments of India and Pakistan in accordance with the freely expressed will of the inhabitants, as is desired by both Governments:

c. To preserve the substantial measure of agreement of fundamental principles which has already been reached between the two Governments under the auspices of the United Nations

d. To avoid unprofitable discussion of disputed issues of the past, and to look forward into the future towards the good-neighbourly and constructive cooperation of the two great nations.

DEMILITARISATION PREPARATORY TO THE PLEBISCITE

2. There should be an agreed program of progressive demilitarization, the basic principle of which should be the reduction of armed forces on either side of the Cease-Fire Line by withdrawal, disbandment and disarmament in such stages as not to cause fear at any point of time to the people on either side of the Cease-Fire Line. The aim should be to reduce the armed personnel in the State of Jammu and Kashmir on each side of the Cease-Fire Line to the minimum compatible with the maintenance of security and of local law and order, and to a level sufficiently low and with the forces so disposed that they will not constitute a restriction on the free expression of opinion for the purposes of the plebiscite.

a. The program of demilitarization should include the withdrawal from the State of Jammu and Kashmir of the regular forces of

Pakistan; and the withdrawal of the regular forces of India not required for purposes of security or for the maintenance of local law and order on the Indian side of the Cease-Fire Line: also the reduction, by disbanding and disarming, of local forces, including on the one side the Armed Forces and Militia of the State of Kashmir and on the other, the Azad Forces.

b. The "Northern Area" should also be included in the above program of demilitarization, and its administration should, subject to United Nations supervision, be continued by the existing local authorities.

SUGGESTED BASIS OF AGREEMENT

3. The Governments of India and Pakistan should reach agreement not later than 31 January 1950, in New York on the following points;

a. The Government of Pakistan should give unconditional assurance to the Government of India that they will deal effectively within their own borders with any possibility of tribal incursion into Jammu and Kashmir to the end that, under no circumstances, will tribesmen be able unlawfully to enter the State of Jammu and Kashmir from or through the territory of Pakistan. The Government of Pakistan should undertake to keep the senior United Nations military observer informed and to satisfy him that the arrangements to this end are and continue to be adequate.

b. The Governments of India and Pakistan should confirm the continued and unconditional inviolability of the "Cease-Fire Line".

c. Agreement should be reached on the basic principles of demilitarization outlined in paragraph 2 above.

d. Agreement should be reached on the minimum forces required for the maintenance of security and of local law and order, and on their general disposition.

e. Agreement should be reached on a date by which the reduction of forces, to the level envisaged in paragraph 2 above, is to be accomplished.

f. Agreement should be reached on the progressive steps to be taken in reducing and redistributing the forces to the level envisaged in paragraph 2 above.

4. In respect to the foregoing matters, the Governments of India and Pakistan should further agree that a United Nations representative, to be appointed by the Secretary-General of the United Nations in agreement with the two Governments, should supervise the execution of the progressive steps in reduction and redistribution of armed forces and that it should be the responsibility of this United Nations representative to give assurance to the people on both sides of the Cease-Fire Line that they have no cause for fear at any stage throughout the process. The United Nations representative should have the duty and authority

a. of interpreting the agreements reached between the parties pursuant to paragraph 3, sub-paragraphs (c), (d), (e) and (f) above, and

b. of determining, in consultation with the Governments of India and Pakistan respectively, the implementation of the plan for the reduction and redistribution of armed forces referred to in paragraph 3 (f) above.

5. When the agreed program of demilitarization preparatory to the plebiscite has been accomplished to the satisfaction of the United Nations representative, the Plebiscite Administrator should proceed forthwith to exercise the functions assigned to him under the terms of UNCIP resolution of 5 January 1949, which, together with UNCIP resolution of 13 August 1948, was accepted by the Governments of India and Pakistan and which are now reaffirmed by these Governments except in so far as the provisions therein contained as modified by the relevant provisions of this document. The functions and powers of the Plebiscite Administrator remain as set forth in UNCIP resolution of 5 January, 1949.

6. The United Nations representative should be authorized to make any suggestions to the Governments of India and Pakistan which, in his opinion are likely to contribute to the expeditious and enduring solution of the Kashmir question, and to place his good

offices at their disposal.

Resolution 80

*RESOLUTION 80 (1950) CONCERNING THE INDIA-PAKISTAN QUESTION, SUBMITTED BY THE REPRESENTATIVES OF CUBA, NORWAY, UNITED KINGDOM AND UNITED STATES AND ADOPTED BY THE SECURITY COUNCIL ON MARCH 14, 1950. (DOCUMENT NO. S/1469), DATED THE 14TH MARCH 1950)

THE SECURITY COUNCIL,

Having received and noted the reports of the United Nations Commission for India and Pakistan establishing its resolutions 39 (1948) of 20 January and 47 (1948) of 21 April 1948,

Having also received and noted the report of General A. G. L. McNaughton on the outcome of his discussions with the representatives of India and Pakistan which were initiated in pursuance of the decision taken by the Security Council on December 17, 1949,

Commending the Governments of India and Pakistan for their statesman like action in reaching the agreements embodied in the United Nations Commission's resolutions of August 13, 1948 and January 5, 1949 for a cease-fire, for the demilitarization of the State of Jammu and Kashmir and for the determination of its final disposition in accordance with the will of the people through the democratic method of a free and impartial plebiscite, and commending the parties in particular for their action in partially implementing these Resolutions by

1. The cessation of hostilities effected January 1, 1949,
2. The establishment of a cease-fire line on July 27, 1949,
3. The agreement that Fleet Admiral Chester W. Nimitz shall be Plebiscite Administrator.

Considering that the resolution of the outstanding difficulties be based upon the substantial measure of agreement of fundamen-

tal principles already reached, and that steps should be taken forthwith for the demilitarization of the State and for the expeditious determination of its future in accordance with the freely expressed will of the inhabitants,

1. *Calls upon* the Governments of India and Pakistan to make immediate arrangements, without prejudice to their rights or claims and with due regard to the requirements of law and order, to prepare and execute within a period of five months from the date of this resolution a program of demilitarization on the basis of the principles of paragraph 2 of General McNaughton proposal or of such modifications of those principles as may be mutually agreed;

2. *Decides* to appoint a United Nations Representative for the following purposes who shall have authority to perform his functions in such place or places as he may deem appropriate;

a. to assist in the preparation and to supervise the implementation of the program of demilitarization referred to above and to interpret the agreements reached by the parties for demilitarization;

b. to place himself at the disposal of the Governments of India and Pakistan and to place before those Governments or the Security Council any suggestions which, in his opinion, are likely to contribute to the expeditious and enduring solution of the dispute which has arisen between the two Governments in regard to the State of Jammu and Kashmir;

c. to exercise all of the powers and responsibilities devolving upon the United Nations Commission for India and Pakistan by reason of existing resolutions of the Security Council and by reason of the agreement of the parties embodied in the Resolutions of the United Nations Commission of August 13, 1948 and January 5, 1949;

d. to arrange at the appropriate stage of demilitarization for the assumption by the Plebiscite Administrator of the functions assigned to the latter under agreements made between the parties;

e. to report to the Security Council as he may consider necessary, submitting his conclusions and any recommendations which he may desire to make;

3. *Requests* the two Governments to take all necessary precautions to ensure that their agreements regarding the cease-fire line continue to be faithfully observed, and calls upon them to take all possible measures to ensure the creation and maintenance of an atmosphere favorable to the promotion of further negotiations;

4. *Extends* its best thanks to the members of the United Nations Commission for India and Pakistan and to General A.G. L. McNaughton for their arduous and fruitful labors;

5. *Agrees* that the United Nations Commission for India and Pakistan shall be terminated, and decides that this shall take place one month after both parties have informed the United Nations representative of their acceptance of the transfer to him of the powers and responsibilities of the United Nations Commission referred to in paragraph 2 (c) above.

*The Security Council voted on this Resolution on 14-3-1950 with the following result:-

In favor: China, **Cuba, **Ecuador, **Egypt, France, **Norway, U.K., and U.S.A.

Against: None

Abstaining: India, and Yugoslavia.

Absent: U.S.S.R.

**Non-permanent Members of the Security Council.

Resolution 91

*RESOLUTION 91 (1951) CONCERNING THE INDIA-PAKISTAN QUESTION SUBMITTED BY THE REPRESENTATIVES OF UNITED KINGDOM AND UNITED STATES AND ADOPTED BY THE SECURITY COUNCIL ON MARCH 30, 1951. (DOCUMENT NO. S/2017/REV. I, DATED THE 30TH MARCH, 1951).

THE SECURITY COUNCIL,

Having received and noted the report of Sir Owen Dixon, the United Nations Representative for India and Pakistan on his mission initiated by the Security Council resolution 80 (1950) of March 14, 1950.

Observing that the Governments of India and Pakistan have accepted the provisions of the United Nations Commission for India and Pakistan resolutions of 13 August, 1948, and 5 January, 1949, and have re-affirmed their desire that the future of the State of Jammu and Kashmir shall be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

Observing that on 27 October, 1950, the General Council of the "All Jammu and Kashmir National Conference" adopted a resolution recommending the convening of a Constituent Assembly for the purpose of determining the "future shape and affiliations of the State of Jammu and Kashmir"; observing further from statements of responsible authorities that action is proposed to convene such a Constituent Assembly and that the area from which such a Constituent Assembly would be elected is only a part of the whole territory of Jammu and Kashmir.

Reminding the Governments and authorities concerned of the principle embodied in its resolutions 47 (1948) of 21 April 1948, 51 (1948) of 3 June 1948 and 80 (1950) of 14 March 1950 and the United Nations Commission for India and Pakistan resolutions of 13 August, 1948, and 5 January, 1949, that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

Affirming that the convening of a Constituent Assembly as recommended by the General Council of the "All Jammu and Kashmir National Conference" and any action that Assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the

State in accordance with the above principle,

Declaring its belief that it is the duty of the Security Council in carrying out its primary responsibility for the maintenance of international peace and security to aid the parties to reach an amicable solution of the Kashmir dispute and that a prompt settlement of this dispute is of vital importance to the maintenance of international peace and security,

Observing from Sir Owen Dixon's report that the main points of difference preventing agreement between the parties were:

- a. The procedure for and the extent of demilitarization of the State preparatory to the holding of a plebiscite, and
- b. The degree of control over the exercise of the functions of Government in the State necessary to ensure a free and fair plebiscite,

1. *Accepts, in compliance with his request, Sir Owen Dixon's resignation and expresses its gratitude to Sir Owen for the great ability and devotion with which he carried out his mission;*

2. *Decides to appoint a United Nations Representative for India and Pakistan in succession to Sir Owen Dixon;*

3. *Instructs the United Nations Representative to proceed to the sub-continent and, after consultation with the Governments of India and Pakistan, to effect the demilitarization of the State of Jammu and Kashmir on the basis of the United Nations Commission for India and Pakistan resolutions of 13 August, 1948, and, 5 January, 1949;*

4. *Calls upon the parties to co-operate with the United Nations Representative to the fullest degree in effecting the demilitarization of the State of Jammu and Kashmir;*

5. *Instructs the United Nations Representatives to report to the Security Council within three months from the date of his arrival on the sub-continent; if at the time of this report, he has not effected demilitarization in accordance with paragraph three above, or obtained the agreement of the parties to a plan for effecting such de-*

militarization, the United Nations Representative shall report to the Security Council those points of difference between the parties in regard to the interpretation and execution of the agreed resolutions of 13 August, 1948, and 5 January, 1949, which he considers must be resolved to enable such demilitarization to be carried out;

6. *Calls upon* the parties, in the event of their discussions with the United Nations Representative failing in his opinion to result in full agreement, to accept arbitration upon all outstanding points of difference reported by the United Nations Representative in accordance with paragraph five above. Such arbitration to be carried out by an arbitrator, or a panel of arbitrators, to be appointed by the President of the International Court of Justice after consultation with the parties;

7. *Decides* that the Military Observer Group shall continue to supervise the cease-fire in the State;

8. *Requests* the Governments of India and Pakistan to ensure that their agreement regarding the cease-fire shall continue to be faithfully observed and calls upon them to take all possible measures to ensure the creation and maintenance of an atmosphere favorable to the promotion of further negotiations and to refrain from any action likely to prejudice a just and peaceful settlement;

9. *Requests* the Secretary-General to provide the United Nations Representative for India and Pakistan with such services and facilities as may be necessary in carrying out the terms of this resolution.

*The Security Council voted on this Resolution on 30-3-1951 with the following result:-

In favor: **Brazil, China, **Ecuador, France, **Netherlands.
**Turkey, U.K., and U.S.A

Against: None.

Abstaining: India, U.S.S.R. and Yugoslavia.

**Non-Permanent Members of the Security Council.

Resolution 96

*RESOLUTION 96 (1951) CONCERNING THE INDIA-PAKISTAN QUESTION ADOPTED BY THE SECURITY COUNCIL ON 10TH NOVEMBER, 1951. (DOCUMENT NO. S/2392, DATED THE 10TH NOVEMBER, 1951).

THE SECURITY COUNCIL,

Having received and noted the report of Dr. Frank Graham, the United Nations Representative for India and Pakistan, on his mission initiated by the Security Council resolution 91 (1951) of 30 March 1951, and having heard Dr. Graham's address to the Council of 18 October 1951,

Noting with approval the basis for a program of demilitarization which could be carried out in conformity with the previous undertakings of the parties, put forward by the United Nations Representative in his communication of 7 September, 1951, to the Prime Ministers of India and Pakistan,

1. *Notes* with gratification the declared agreement of the two parties to those parts of Dr. Graham's proposals which reaffirm their determination to work for a peaceful settlement, their will to observe the cease-fire agreement and their acceptance of the principle that the accession of the State of Jammu and Kashmir should be determined by a free and impartial plebiscite under the auspices of the United Nations;

2. *Instructs* the United Nations Representative to continue his efforts to obtain agreement of the parties on a plan for effecting the demilitarization of the State of Jammu and Kashmir;

3. *Calls upon* the parties to co-operate with the United Nations Representative to the fullest degree in his efforts to resolve the outstanding points of difference between them;

4. *Instructs* the United Nations Representative to report to the Security Council on his efforts, together with his views concerning the problems confided to him, not later than six weeks after this resolution comes into effect.

*The Security Council voted on this Resolution on 10-11-1951 with the following result:-

In favor: **Brazil, China, **Ecuador, France, **Netherlands, **Turkey, U.K., U.S.A., and **Yugoslavia.

Against: None.

Abstaining: India, and U.S.S.R.

**Non-Permanent Members of the Security Council.

Resolution 98

*RESOLUTION 98 (1952) ADOPTED BY THE SECURITY COUNCIL AT ITS 611TH MEETING ON 23 DECEMBER, 1952. (DOCUMENT NO. S/2883, DATED THE 24TH DECEMBER, 1952).

THE SECURITY COUNCIL,

Recalling its resolutions, 91 (1951) of 30 March 1951, its decision of 30 April 1951 and its resolution 96 (1951) of 10 November 1951,

Further Recalling the provisions of the United Nations Commission for India and Pakistan resolutions of 13 August 1948, and 5 January 1949, which were accepted by the Governments of India and Pakistan and which provided that the question of the accession of the State of Jammu and Kashmir to India or Pakistan would be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

Having received the third report, dated 22 April 1952, and the fourth report, dated 16 September 1952, of the United Nations Representative for India and Pakistan;

Endorses the general principles on which the United Nations Representative has sought to bring about agreement between the Governments of India and Pakistan;

2. Notes with gratification that the United Nations Representative has reported that the Governments of India and Pakistan have accepted all but two of the paragraphs of his twelve-point proposals;

3. Notes that agreement on a plan of demilitarization of the State of Jammu and Kashmir has not been reached because the Governments of India and Pakistan have not agreed on the whole of paragraph 7 of the twelve-point proposals;

4. Urges the Governments of India and Pakistan to enter into immediate negotiations under the auspices of the United Nations Representative for India and Pakistan in order to reach agreement on the specific number of forces to remain on each side of the cease-fire line at the end of the period of demilitarization, this number to be between 3,000 and 6,000 armed forces remaining on the Pakistan side of the cease-fire line and between 12,000 and 18,000 armed forces remaining on the India side of the cease-fire line, as suggested by the United Nations Representative in his proposals of 16 July 1952, such specific numbers to be arrived at bearing in mind the principles or criteria contained in paragraph 7 of the United Nations Representative's proposal of 4 September 1952;

5. Records its gratitude to the United Nations Representative for India and Pakistan for the great efforts which he has made to achieve a settlement and requests him to continue to make his services available to the Governments of India and Pakistan to this end;

6. Requests the Governments of India and Pakistan to report to the Security Council not later than thirty days from the date of the adoption of this resolution;

7. Requests the United Nations Representative for India and Pakistan to keep the Security Council informed of any progress.

*The Security Council voted on this resolution on 23-12-1952 with the following result:-

In favor: **Brazil, **Chile, China, France, **Greece, **Netherlands, **Turkey, U.K. and U.S.A.

Against: None.

Abstaining: U.S.S.R.

** Non-Permanent Members of the Security Council,

One Member (Pakistan) did not participate in the voting.

Resolution 122

*RESOLUTION 122 (1957) ADOPTED BY THE SECURITY COUNCIL AT ITS 765TH MEETING ON 24 JANUARY, 1957.

THE SECURITY COUNCIL,

Having heard statements from representatives of the Governments of India and Pakistan concerning the dispute over the State of Jammu and Kashmir,

Reminding the Governments and authorities concerned of the principle embodied in its resolutions 47 (1948) of 21 April 1948, 51 (1948) of 3 June, 1948, 80 (1950) of 14 March 1950 and 91 (1951) of 30 March 1951, and the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949, that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

1. *Reaffirms the affirmation in its resolution 91 (1951) and declares that the convening of a Constituent Assembly as recommended by the General Council of the "All Jammu and Kashmir National Conference" and any action that Assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or action by the parties concerned in support of any such action by the Assembly, would not constitute a disposition of the State in accordance with the above principle;*

Decides to continue its consideration of the dispute.

*The Security Council voted on this Resolution on 24-1-1957 with the following results:-

Infavour: **Australia, China, **Columbia, **Cuba, France, **Iraq, **Philippines, **Sweden, U.K. and U.S.A.

Abstaining: U.S.S.R.

**Non-Permanent Members of the Security Council.

Joint Draft Resolution of 14 Feb. 1957

THE INDIA-PAKISTAN QUESTION

AUSTRALIA, CUBA, UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND UNITED STATES OF AMERICA: *JOINT DRAFT RESOLUTION

THE SECURITY COUNCIL

Recalling its resolution of 24 January 1957, its previous resolutions and the resolutions of the United Nations Commission for India and Pakistan on the India-Pakistan question;

Having taken into consideration the statements of the representatives of the Governments of India and Pakistan;

Concerned at the lack of progress in settling the dispute;

Considering the importance which it has attached to the demilitarization of the State of Jammu and Kashmir as a step towards the settlement of the dispute;

Noting that demilitarization preparatory to the holding of a free and impartial plebiscite under United Nations auspices has not been achieved in accordance with the resolutions of the United Nations Commission for India and Pakistan;

Noting the proposal of the representative of Pakistan for the use of a temporary United Nations force in connexion with demilitarization;

Believing that, insofar as it might contribute towards the achievement of demilitarization as envisaged in the resolutions of the United Nations Commission for India and Pakistan and towards the pacific settlement of the dispute, the use of such a force would deserve consideration;

1. *Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals which, in his opinion, are likely to contribute to the achievement of demilitarization or to the establishment of other conditions for progress towards the settlement of the dispute, having regard to the previous resolutions of the Security Council and of*

the United Nations Commission for India and Pakistan, and bearing in mind the statements of the representatives of the Governments of India and Pakistan and the proposal for the use of a temporary United Nations force;

2. Authorizes him to visit the sub-continent for this purpose;
3. Requests him to report to the Security Council as soon as possible but not later than 15 April 1957;
4. Invites the Governments of India and Pakistan to cooperate with him in the performance of these functions;
5. Requests the Secretary-General and the United Nations representative for India and Pakistan to render such assistance to him as he may request.

*The Security Council voted on this Resolution (S/3787) on February 20, 1957 with the following result:-

Infavour: Australia, China, Columbia, Cuba, France, Iraq, Philippines, United Kingdom of Great Britain and Northern Ireland, United States of America.

Against Union of Soviet Socialist Republics.

Abstaining: Sweden.

The President (Mr. Jarring, the Representative of Sweden) announced the result in the following words:

"There were 9 votes in favor, one against and one abstention. Since the negative vote was cast by a member of the Council the joint draft resolution has not been adopted".

Resolution No. 123

RESOLUTION 123 (1957) ADOPTED BY THE SECURITY COUNCIL AT ITS 774TH MEETING ON 21 FEBRUARY, 1957. (DOCUMENT NO. S/3793, DATED THE 21ST FEBRUARY 1957).

THE SECURITY COUNCIL,

Recalling its resolution 122 (1957) of 24 January 1957, its previous resolutions and the resolutions of the United Nations Commission for India and Pakistan on the India-Pakistan question,

1. Requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan any proposals which, in his opinion, are likely to contribute towards the settlement of the dispute, having regard to the previous resolutions of the Security Council and of the United Nations Commission for India and Pakistan; to visit the sub-continent for this purpose; and to report to the Security Council not later than 15 April 1957;

2. Invites the Governments of India and Pakistan to cooperate with him in the performance of these functions;

3. Requests the Secretary-General and the United Nations Representative for India and Pakistan to render such assistance as he may request.

*The Security Council voted on this Resolution on 21-2-1957 with the following result:-

In favor **Australia, China, **Columbia, **Cuba, France, **Iraq, **Philippines, **Sweden, U.K., U.S.A.

Against: None

Abstaining: U.S.S.R.

**Non-Permanent Members of the Security Council.

Joint Draft Resolution dtd.16 Nov. 1957

THE INDIA-PAKISTAN QUESTION

AUSTRALIA, COLUMBIA, PHILIPPINES, U.K., U.S.A. JOINT DRAFT RESOLUTION.*

THE SECURITY COUNCIL,

Having received and noted with appreciation the report of Mr. Gunnar V. Jarring, the Representative of Sweden, on the mission undertaken by him pursuant to the Security Council resolution of 21 February 1957;

Expressing its thanks to Mr. Jarring for the care and ability with which he has carried out his mission;

Observing with appreciation the expressions made by both parties of sincere willingness to co-operate with the United Nations in finding peaceful solution;

Observing further that the Governments of India and Pakistan recognize and accept the commitments undertaken by them in the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948 and 5 January 1949, which envisage the determination of the future status of the State of Jammu and Kashmir in accordance with the will of the people through the democratic method of a free and impartial plebiscite, and that Mr. Jarring felt it appropriate to explore what was impeding their full implementation;

Concerned over the lack of progress towards a settlement of the dispute which his report manifests;

Considering the importance which it has attached to demilitarization of the State of Jammu and Kashmir as one of the steps towards a settlement;

Recalling its previous resolutions and the resolutions of U.N.C.I.P. on the India-Pakistan question;

1. *Requests* the Government of India and the Government of Pakistan to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate

the situation and to appeal to their respective peoples to assist in creating and maintaining an atmosphere favorable to the promotion of further negotiations;

2. *Requests* the United Nations Representative for India and Pakistan to make any recommendations to the parties for further action which he considers desirable in connexion with Part I of the U.N.C.I.P. resolution of 13 August 1948, having regard to his third and fifth reports and the report of Mr. Jarring, and to enter into negotiations with the Governments of India and Pakistan in order to implement Part II of the U.N.C.I.P. resolution of 13 August 1948, and in particular to reach agreement on a reduction of forces on each side of the cease-fire line to a specific number, arrived at on the basis of the relevant Security Council resolutions and having regard to the fifth report of the United Nations Representative for India and Pakistan;

3. *Calls upon* the Governments of India and Pakistan to co-operate with the United Nations Representative in order to formulate an early agreement on demilitarization procedures, which should be implemented within three month of such an agreement being reached;

4. *Authorizes* the United Nations Representative to visit the sub-continent for these purposes; and

5. *Instructs* the United Nations Representative to report to the Security Council on his efforts as soon as possible.

*The Representative of the U.S.S.R. said in the Security Council on 21 November, 1957 that he would oppose this Joint Draft Resolution (S/3911). The President deferred the consideration of the question without putting the draft resolution to vote. Subsequently, certain amendments were introduced by the Representative of Sweden to the Joint Draft Resolution and this Draft Resolution as amended (S/3920) was adopted by the Security Council on 2-12-1957, vide Resolution No. 126 (1957).

June 22, 1962

*DRAFT RESOLUTION SUBMITTED BY IRELAND TO THE SECURITY COUNCIL ON JUNE 22, 1962.

THE SECURITY COUNCIL:

Having heard the statements from the representatives of the Governments of India and Pakistan concerning the India-Pakistan question;

Having considered the report of the United Nations representative, Dr. F. Graham;

Expressing its best thanks to Dr. Graham for his efforts;

Noting with satisfaction the pledges made by the two parties to the effect that their Governments will not resort to force in settling this question;

Conscious of the responsibility of Security Council under the Charter for helping the parties to reach a peaceful solution of the question.

1. *Reminds* both parties of the principles contained in its resolution of 17 January 1948, and in the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948 and 5 January 1949.

2. *Urges* the Governments of India and Pakistan to enter into negotiations on the question at the earliest convenient time with a view to its ultimate settlement in accordance with Article 33 and other relevant provisions of the Charter of the United Nations.

3. *Appeals* to the two Governments to take all possible measures to ensure the creation and maintenance of an atmosphere favorable to the promotion of negotiations.

4. *Urges* the Government of India and the Government of Pakistan to refrain from making any statements, or taking any action, which may aggravate the situation.

5. *Requests* the acting Secretary-General to provide the two Governments with such services as they may request for the purpose of carrying out the terms of the resolution.

*The Security Council voted on this Resolution on June 22, 1962 with the following result:-

Infavour: Chile, China, France, Ireland, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Against: Rumania, Union of Soviet Socialist Republic.

Abstaining: Ghana, United Arab Republic

One Permanent Member of the Security Council having cast a negative vote, the draft Resolution was not adopted.

Document No. S/Pv 1117

STATEMENT OF THE PRESIDENT OF THE SECURITY COUNCIL (FRENCH REPRESENTATIVE) MADE ON THE 18TH MAY, 1964, AT THE ELEVENTH HUNDRED AND SEVENTEENTH MEETING OF THE SECURITY COUNCIL. (DOCUMENT NO. S/PV. 1117, DATED THE 18TH MAY, 1964) SUMMARISING THE CONCLUSION OF THE DEBATE ON KASHMIR.

"I

"(a) The members of the Council noted that this week's debate was a continuation of our discussions of February and March on the question of Jammu and Kashmir. They recalled that they had already, particularly during the debate in February, stated the views of their Governments on the basic facts of the problem, including the relevant United Nations resolutions, the question as to the juridical status of Jammu and Kashmir, and the principles of the Charter applicable to the case. They confirmed that the statements which they had made at that time were still valid;

"(b) The members of the Council expressed their concern with respect to two great countries which have everything to gain from re-establishing good relations with each other and whose present disputes, particularly that cantering upon Jammu and Kashmir, should be settled amicably in the interest of world peace;

"(c) The members of the Council expressed their feeling that recent developments were such as might lead to the adoption of more flexible positions to better mutual understanding, and therefore to a situation in which conversations between the parties con-

cerned would have better prospects of leading to a settlement;

"(d) The members of the Council expressed their conviction that everything should be done to consolidate those favorable factors and to avoid jeopardizing those prospects and that this required an attitude of conciliatory moderation on the part of the both parties and an attitude of caution, but also of vigilant attention, on the part of the United Nations;

"(e) The members of the Council expressed the hope that both Parties would refrain from any act which might aggravate the situation and that they would take steps calculated to reestablish an atmosphere of moderation between the two countries and peace and harmony between the communities;

"(f) The members of the Council expressed the hope that, in the light of our recent debates, the two countries concerned would resume their contacts in the near future with a view to settling their disputes, Particularly that cantering upon Jammu and Kashmir, by negotiation;

"II

"Several members of the Council expressed the view that the Secretary-General of the United Nations might possibly give useful assistance to the parties in order to facilitate the resumption of negotiations negotiations in the event of the latter encountering difficulties. Other members of the Council, however, expressed the view that the negotiations between India and Pakistan might be complicated by any outside intervention, and that even the principle of having recourse to the Secretary-General should be a matter for agreement between the parties.

"III

The India-Pakistan question remains on the agenda of the Security Council."

Resolution 209

STATEMENT OF THE PRESIDENT OF THE SECURITY COUNCIL (FRENCH REPRESENTATIVE) MADE ON THE 18TH MAY, 1964, AT THE ELEVENTH HUNDRED AND SEVENTEENTH MEETING OF THE SECURITY COUNCIL. (DOCUMENT NO. S/PV. 1117, DATED THE 18TH MAY, 1964) SUMMARISING THE CONCLUSION OF THE DEBATE ON KASHMIR.

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"(b) The members of the Council expressed their concern with respect to two great countries which have everything to gain from re-establishing good relations with each other and whose present disputes, particularly that cantering upon Jammu and Kashmir, should be settled amicably in the interest of world peace;

"(c) The members of the Council expressed their feeling that recent developments were such as might lead to the adoption of more flexible positions to better mutual understanding, and therefore to a situation in which conversations between the parties concerned would have better prospects of leading to a settlement;

"(d) The members of the Council expressed their conviction that everything should be done to consolidate those favorable factors and to avoid jeopardizing those prospects and that this required an attitude of conciliatory moderation on the part of the both parties and an attitude of caution, but also of vigilant attention, on the part of the United Nations;

"(e) The members of the Council expressed the hope that both

Parties would refrain from any act which might aggravate the situation and that they would take steps calculated to reestablish an atmosphere of moderation between the two countries and peace and harmony between the communities;

"(f) The members of the Council expressed the hope that, in the light of our recent debates, the two countries concerned would resume their contacts in the near future with a view to settling their disputes, Particularly that cantering upon Jammu and Kashmir, by negotiation;

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"III

The India-Pakistan question remains on the agenda of the Security Council."

Resolution 209

RESOLUTION 209 (1965) ADOPTED BY THE SECURITY COUNCIL AT ITS 1237TH MEETING ON 4 SEPTEMBER, 1965.

THE SECURITY COUNCIL:

Noting the report of the Secretary-General (S/6651) dated 3 September 1965,

Having heard the statements of the representatives of India and Pakistan,

Concerned at the deteriorating situation along with Cease-fire Line in Kashmir,

1. *Calls upon* the Governments of India and Pakistan to take forthwith all steps for an immediate cease-fire;

2. *Calls upon* the two Governments to respect the Cease-fire Line and have all armed personnel of each party withdrawn to its own side of the line;

3. *Calls upon* the two Governments to co-operate fully with the UNMOGIP in its task of supervising the observance of the cease-fire;

4. *Requests* the Secretary-General to report to the Council within three days on the implementation of this resolution.

*The Security Council unanimously adopted this Resolution on 4-9-1965.

Members of the Council: **Bolivia, China, France, *Ivory Coast, **Jordan, **Malaysia, **Netherlands, U.S.S.R., U.K., U.S.A. and **Uruguay.

**Non-Permanent Members of the Security Council.

Resolution 210

*RESOLUTION 210 (1965) ADOPTED BY THE SECURITY COUNCIL AT ITS 1238TH MEETING ON 6 SEPTEMBER, 1965.

THE SECURITY COUNCIL,

Noting the report by the Secretary-General on developments in the situation in Kashmir since the adoption of the Security Council cease-fire resolution on 4 September 1965 [S/RES/209 (1965)] being document S/6661 dated 6 September 1965,

Noting with deep concern the extension of the fighting which adds immeasurably to the seriousness of the situation,

1. *Calls upon* the parties to cease hostilities in the entire area of conflict immediately, and promptly withdraw all armed personnel back to the positions held by them before 5 August 1965;

2. *Requests* the Secretary-General to exert every possible effort to give effect to this resolution and the resolution of 4 September 1965,

to take all measures possible to strengthen the UNMOGIP, and to keep the Council promptly and currently informed on the implementation of the resolutions and on the situation in the area;

3. *Decides* to keep this issue under urgent and continuous review so that the Council may determine what further steps may be necessary to secure peace and security in the area.

*The Security Council unanimously adopted this Resolution on 6-9-1965.

Members of the Council: **Bolivia, China, France, **Ivory Coast, **Jordan, **Malaysia, **Netherlands, U.S.S.R., U.K., U.S.A. and **Uruguay.

**Non Permanent Members of the Security Council.

Resolution 211

*RESOLUTION 211 (1965) ADOPTED BY THE SECURITY COUNCIL AT ITS 1242ND MEETING ON SEPTEMBER, 20, 1965.

"The Security Council having considered the reports of the Secretary-General on his consultations with the Governments of India and Pakistan.

Commending the Secretary-General for his unrelenting efforts in furtherance of the objectives of the Security Council's Resolutions of 4 and 6 September, having heard the statements of the Representatives of India and Pakistan, noting the differing replies by the Parties to an appeal for a Cease-Fire as set out in the report of Secretary-General (S/6683), but noting further with concern that no Cease-fire has yet come into being. *Convinced* that an early cessation of hostilities is essential as a first step towards a peaceful settlement of the outstanding differences between the two countries on Kashmir and other related matters.

1. *Demands* that Cease-Fire should take effect on Wednesday, 22 September, 1965, at 0700 hours GMT and Calls upon both Gov-

ernments to issue orders for a Cease-Fire at that moment and a subsequent withdrawal of all armed personnel back to the positions held by them before 5 August, 1965.

2. *Requests* the Secretary-General to provide the necessary assistance to ensure supervision of the Cease-Fire and withdrawal of all armed personnel.

3. *Calls on* all States to refrain from any action which might aggravate the situation in the Area.

4. *Decides* to consider as soon as operative Paragraph 1 of the Council's Resolution 210 of 6 September has been implemented, what steps could be taken to assist towards a settlement of the political problem underlying the present conflict, and in the meantime calls on the two Governments to utilize all peaceful means including those listed in article 33 of the Charter, to this end.

5. *Requests* the Secretary-General to exert every possible effort to give effect to this resolution, to seek a peaceful solution, and to report to the Security Council thereon."

*The Security Council voted on this Resolution on 20-9-1965 with the following result:-

Infavour: **Bolivia, China, France, **Ivory Coast, **Malaysia, **Netherlands, U.S.S.R., U.K., U.S.A. and Uruguay.

Against: None.

**Non-Permanent Members of the Security Council.

Resolution 214

RESOLUTION 214 (1965) ADOPTED BY THE SECURITY COUNCIL AT ITS 1245TH MEETING, ON 27TH SEPTEMBER 1965.

THE SECURITY COUNCIL,

Noting the reports of the Secretary-General (S/6710, Add 1 and 2),

Reaffirming its resolutions of 4, 6 and 20 September 1965 (S/RES/209, S/RES/210, S/RES/211),

Expressing the grave concern of the Council that the cease-fire

agreed to unconditionally by the Governments of India and Pakistan is not holding,

Recalling that the cease-fire demand in the Council's resolutions was unanimously endorsed by the Council and agreed to by the Governments of both India and Pakistan,

Demands that the parties urgently honor their commitments to the Council to observe the cease-fire; and further calls upon the parties to promptly withdraw all armed personnel as necessary steps in the full implementation of the resolution of 20 September.

*The Security Council voted on this Resolution on 27-9-1965 with the following result:-

In favor: **Bolivia, China, France, **Ivory Coast, **Malaysia, **Netherlands, U.S.S.R., U.K., U.S.A. and **Uruguay.

Against: None.

Abstaining: **Jordan.

**Non-Permanent Members of the Security Council.

Resolution 215

RESOLUTION 215 (1965) ADOPTED BY THE SECURITY COUNCIL AT ITS 1251ST MEETING ON 5 NOVEMBER 1965.

THE SECURITY COUNCIL,

Regretting the delay in the full achievement of a complete and effective cease-fire and a prompt withdrawal of armed personnel to the positions held by them before 5 August 1965, as called for in its resolution 209 (1965) of 4 September, 210 (1965) of 6 September, 211 (1965) of 20 September and 214 (1965) of 27 September 1965,

1. *Reaffirms* its resolution 211 (1965) of 20 September 1965 in all its parts;

2. *Requests* the Governments of India and Pakistan to co-operate towards a full implementation of paragraph 1 of resolution 211 (1965); calls upon them to instruct their armed personnel to co-oper-

ate with the

United Nations and cease all military activity; and insists that there be an end to violations of the Cease-Fire,

3. *Demands* the prompt and unconditional execution of the proposal already agreed to in principle by the Governments of India and Pakistan that their representatives meet with a suitable representative of the Secretary-General, to be appointed without delay after consultation with both parties, for the purpose of formulating and agreed plan and schedule for the withdrawals by both parties; urges that such a meeting shall take place as soon as possible and that such a plan contain a time-limit on its implementation; and requests the Secretary-General to report on the progress achieved in this respect within three weeks of the adoption of the present resolution;

4. *Requests* the Secretary-General to submit for its consideration as soon as possible a report on compliance with the present resolution.

*The Security Council voted on this Resolution on 5-11-1965 with the following result:-

In favor: Bolivia, China, France, **Ivory Coast, **Malaysia, **Netherlands, U.K., U.S.A., and **Uruguay

Against: None.

Abstaining: **Jordan, and U.S.S.R.

**Non-Permanent Members of the Security Council.

Resolution 303

RESOLUTION 303 (1971) ADOPTED BY THE SECURITY COUNCIL AT ITS 1606TH MEETING, ON 6 DECEMBER 1971.

THE SECURITY COUNCIL,

Having considered the item on the agenda of its 1606th meeting as contained in document S. Agenda/1606.

Taking into account that the lack of unanimity of its permanent members at the 1606th and 1607th meetings of the Security Council has prevented it from exercising its primary responsibility for the maintenance on international peace and security,

Decides to refer the question contained in documents S/Agenda/1606 to the General Assembly at its twenty-sixth session, as provided for in Assembly resolution 377 A (V) of 3 November 1950.

The Security Council voted on this Resolution on 6-12-1971 with the following result:-

In favour: 11 vote.

Against: None.

Abstaining: 4 (France, Poland, U.S.S.R. and Britain).

4,5,6 Dec. 1971

QUESTION CONSIDERED BY THE SECURITY COUNCIL AT ITS 1606TH, 1607TH AND 1608TH MEETINGS ON 4, 5 AND 6 DECEMBER, 1971,

THE GENERAL ASSEMBLY,

Noting the reports of the Secretary-General of 3 and 4 December 1971 and the letter from the President of the Security Council transmitting the text of Council Resolution 303 (1971) of 6 December 1971,

Gravely concerned that hostilities have broken out between India and Pakistan which constitute an immediate threat to international peace and security,

Recognizing the need to deal appropriately at a subsequent stage,

within the framework of the Charter of the United Nations, with the issues which have given rise to the hostilities,

Convinced that an early political solution would be necessary for the restoration of conditions of normalcy in the area of conflict and for the return of the refugees to their homes,

Mindful of the provisions of the Charter, in particular of Article 2, paragraph 4,

Recalling the Declaration on the Strengthening of International Security, particularly paragraphs 4, 5 and 6.

Recognizing further the need to take immediate measures to bring about an immediate cessation of hostilities between India and Pakistan and effect a withdrawal of their armed forces to their own side of the

India-Pakistan borders,

Mindful of the purposes and principles of the Charter and of the General Assembly's responsibilities under the relevant provisions of the Charter and of Assembly resolution 377 A (V) of 3 November 1950,

1. *Calls upon* the Governments of India and Pakistan to take forthwith all measures for an immediate cease-fire and withdrawal of their armed forces on the territory of the other to their own side of the India-Pakistan borders;

2. *Urges* that efforts be intensified in order to bring about, speedily and in accordance with the purposes and principles of the Charter of the United Nations, conditions necessary for the voluntary return of the East Pakistan refugees to their homes;

3. *Calls for* the full co-operation of all States with Secretary-General for rendering assistance to and relieving the distress of those refugees;

4. *Urges* that every effort be made to safeguard the lives and well-being of the civilian population in the area of conflict;

5. *Requests* the Secretary-General to keep the General Assembly and the Security Council promptly and currently informed on the

implementation of the present resolution;

6. *Decides* to follow the question closely and to meet again should the situation so demand;

7. *Calls upon* the Security Council to take appropriate action in the light of the present resolution.

Resolution 307

RESOLUTION 307 (1971) ADOPTED BY THE SECURITY COUNCIL AT ITS 1616TH MEETING, ON 21 DECEMBER 1971.

THE SECURITY COUNCIL,

Having discussed the grave situation in the sub-continent, which remains a threat to international peace and security.

Noting General Assembly Resolution 2793 (XXVI) of 7 December 1971,

Noting the reply of the Government of Pakistan on 9 December, 1971,

Noting the reply of the Government of India on 12 December 1971,

Having heard the statements of the Deputy Prime Minister of Pakistan and the Foreign Minister of India,

Noting further the statement made at the 1616th meeting of the Security Council by the Foreign Minister of India containing a unilateral declaration of a cease-fire in the western theater,

Noting Pakistan's agreement to the cease-fire in the western theater with effect from 17 December 1971,

Noting that consequently a cease-fire and a cessation of hostilities prevail,

1. *Demands* that a durable cease-fire and cessation of all hostilities in all areas of conflict be strictly observed and remain in effect until withdrawals take place, as soon as practicable, of all armed forces to their respective territories and to positions which fully re-

spect the cease-fire line in Jammu and Kashmir supervised by the United Nations Military Observer Group in India and Pakistan;

2. *Calls upon* all Member States to refrain from any action which may aggravate the situation in the sub-continent or endanger international peace;

3. *Calls upon* all those concerned to take all measures necessary to preserve human life and for the observance of the Geneva conventions of 1949 and to apply in full their provisions as regards the protection of the wounded and sick, prisoners of war and civilian population;

4. *Calls for* international assistance in the relief of suffering and the rehabilitation of refugees and their return in safety and dignity to their homes, and for full co-operation with the Secretary-General to that effect;

5. *Authorizes* the Secretary-General to appoint if necessary a special representative to lend his good offices for the solution of humanitarian problems;

6. *Requests* the Secretary-General to keep the Council informed without delay on developments relating to the implementation of the present resolution;

7. *Decides* to remain seized of the matter and to keep it under active consideration.

The Security Council voted on this Resolution on 21-12-1971 with the following result:-

In favor: 13 votes. Against: None. Abstaining: 2 (Poland and USSR).

ARTICLE 370 OF THE INDIAN CONSTITUTION

(1) Notwithstanding anything in this Constitution,

(a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to,

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with

such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

In exercise of the powers conferred by Article 370 the President, on the recommendation of the Constituent Assembly of the State of Jammu and Kashmir, declared that as from the 17th Day of November, 1952, the said Article 370 shall be operative with the modification that for the Explanation in Cl. (1) thereof, the following explanation is substituted namely.

"Explanation - For the purpose of this article, the Government of the State means the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadr-i-Riyasat (now Governor) of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office."

(Ministry of Law order No. C. O. dated 15th Nov. 1952.)

The Delhi Agreement, 1952

After the Constituent Assembly of the State had taken important decisions referred to immediately above, it was deemed necessary to receive the concurrence of the Indian Government. Accordingly, the representatives of Kashmir Government conferred with the representatives of Indian Government and arrived at an agreement. This arrangement was later on known as the "Delhi Agreement, 1952". The main features of this agreement were:

In view of the uniform and consistent stand taken up by the Jammu and Kashmir Constituent Assembly that sovereignty in all matters other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature vested in the Centre in respect of all states other than Jammu and Kashmir, in the case of the latter they vested in the State itself;

It was agreed between the two Governments that in accordance with Article 5 of the Indian Constitution, persons who have their domicile in Jammu and Kashmir shall be regarded as citizens of India, but the State legislature was given power to make laws for

conferring special rights and privileges on the 'state subjects' in view of the 'State Subject Notifications of 1927 and 1932: the State legislature was also empowered to make laws for the 'State Subjects' who had gone to Pakistan on account of the communal disturbances of 1947, in the event of their return to Kashmir;

as the President of India commands the same respect in the State as he does in other Units of India, Articles 52 to 62 of the Constitution relating to him should be applicable to the State. It was further agreed that the power to grant reprieves, pardons and remission of sentences etc; would also vest in the President of India'

the Union Government agreed that the State should have its own flag in addition to the Union flag, but it was agreed by the State Government that the State flag would not be a rival of the Union flag; it was also recognised that the Union flag should have the same status and position in Jammu and Kashmir as in the rest of India, but for historical reasons connected with the freedom struggle in the State, the need for continuance of the State flag was recognised

there was complete agreement with regard to the position of the Sadar-i-Riyasat; though the Sadar-i-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before his installation as such; in other Indian States the Head of the State was appointed by the President and was as such his nominee but the person to be appointed as the Head, had to be a person acceptable to the Government of that State; no person who is not acceptable to the State Government can be thrust on the State as the Head. The difference in the case of Kashmir lies only in the fact that Sadar-i-Riyasat will in the first place be elected by the State legislature itself instead of being a nominee of the Government and the President of India. With regard to the powers and functions of the Sadar-i-Riyasat the following argument was mutually agreed upon

the Head of the State shall be a person recognised by the President of the Union on the recommendations of the Legislature of the State;

he shall hold office during the pleasure of the President;

he may, by writing under his hand addressed to the President, resign his office;

subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office;

provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office"

with regard to the fundamental rights, some basic principles agreed between the parties were enunciated; it was accepted that the people of the State were to have fundamental rights. But in the view of the peculiar position in which the State was placed, the whole chapter relating to 'Fundamental Rights' of the Indian Constitution could not be made applicable to the State, the question which remained to be determined was whether the chapter on fundamental rights should form a part of the State Constitution of the Constitution of India as applicable to the State;

with regard to the jurisdiction of the Supreme Court of India, it was accepted that for the time being, owing to the existence of the Board of Judicial Advisers in the State, which was the highest judicial authority in the State, the Supreme Court should have only appellate jurisdiction;

there was a great deal of discussion with regard to the "Emergency Powers"; the Government of India insisted on the application of Article 352, empowering the President to proclaim a general emergency in the State; the State Government argued that in the exercise of its powers over defence (Item 1 on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim emergency but the State delegation was, however, averse to the President exercising the power to proclaim a general emergency on account of internal disturbance.

In order to meet the viewpoint of the State's delegation, the Government of India agreed to the modification of Article 352 in its

application to Kashmir by the addition of the following words:

"but in regard to internal disturbance at the request or with the concurrence of the Government of the State."

At the end of clause (1)

Both the parties agreed that the application of Article 356, dealing with suspension of the State Constitution and 360, dealing with financial emergency, was not necessary.

The facts analysed above make it clear that the State of Jammu and Kashmir enjoys a special position in the Union of India, and this position of the State has been permitted by Article 2 of the Constitution itself. "In arriving at this arrangement", declared Sheikh Mohammad Abdullah, the then Prime Minister of Jammu and Kashmir, "the main consideration before our Government was to secure a position for the State which would be consistent with the requirements of maximum autonomy for the local organs of the State power which are the ultimate source of authority in the State while discharging obligations as a Unit of the federation".

The Jammu and Kashmir Constituent Assembly discussed this arrangement and finally adopted a motion of approach on August 21, 1952.

The agreement was discussed in the Union Parliament on August 7, 1952 and accepted.

Tashkent Declaration

January 10, 1966

The Prime Minister of India and the President of Pakistan, having met at Tashkent and having discussed the existing relations between India and Pakistan hereby declare their firm resolve to restore normal and peaceful relations between their countries and to promote understanding and friendly relations between their peoples. They consider the attainment of these objectives of vital importance for the welfare of the 600 million people of India and Pakistan.

(i) The Prime Minister of India and the President of Pakistan agree that both sides will exert all efforts to create good neighborly relations between India and Pakistan in accordance with the United Nations Charter. They reaffirm their obligation under the Charter not to have recourse to force and to settle their disputes through peaceful means. They considered that the interests of peace in their region and particularly in the Indo-Pakistan subcontinent and indeed, the interests of the peoples of India and Pakistan were not served by the continuance of tension between the two countries. It was against this background that Jammu & Kashmir was discussed, and each of the sides set forth its respective position.

Troops Withdrawal

(ii) The Prime Minister of India and the President of Pakistan have agreed that all armed personnel of the two countries shall be withdrawn not later than 25 February 1966 to the positions they held prior to 5 August 1965, and both sides shall observe the cease-fire terms on the cease-fire line.

(iii) The Prime Minister of India and the President of Pakistan have agreed that relations between India and Pakistan shall be based

on the principle of non-interference in the internal affairs of each other.

(iv) The Prime Minister of India and the President of Pakistan have agreed that both sides will discourage any propaganda directed against the other country and will encourage propaganda which promotes the development of friendly relations between the two countries.

(v) The Prime Minister of India and the President of Pakistan have agreed that the High Commissioner of India to Pakistan and the High Commissioner of Pakistan of India will return to their posts and that the normal functioning of diplomatic missions of both countries will be restored. Both Governments shall observe the Vienna Convention of 1961 on Diplomatic Intercourse.

Trade Relations

(vi) The Prime Minister of India and the President of Pakistan have agreed to consider measures towards the restoration of economic and trade relations, communications as well as cultural exchanges between India and Pakistan, and to take measures to implement the existing agreement between India and Pakistan.

(vii) The Prime Minister of India and the President of Pakistan have agreed that they will give instructions to their respective authorities to carry out the repatriation of the prisoners of war.

(viii) The Prime Minister of India and the President of Pakistan have agreed that the two sides will continue the discussions of questions relating to the problems of refugees and eviction of illegal immigrations. They also agreed that both sides will create conditions which will prevent the exodus of people. They further agree to discuss the return of the property and assets taken over by either side in connection with the conflict.

Soviet Leaders Thanked

(ix) The Prime Minister of India and the President of Pakistan have agreed that the two sides will continue meetings both at highest and at other levels of matters of direct concern to both countries.

Both sides have recognized the need to set up joint Indian-Pakistani bodies which will report to their Governments in order to decide what further steps should be taken.

(x) The Prime Minister of India and the President of Pakistan record their feelings, deep appreciation and gratitude to the leaders of the Soviet Union, the Soviet Government and personally to the Chairman of the Council of Ministers of the USSR for their constructive, friendly and noble part in bringing about the present meeting which has resulted in mutually satisfactory results. They also express to the Government and friendly people of Uzbekistan their sincere thankfulness for their overwhelming reception and generous hospitality.

They invite the Chairman of the Council of Ministers of the USSR to witness this declaration.

Prime Minister of India
Lal Bahadur Shastri
Tashkent, January 10, 1966

President of Pakistan
Mohammed Ayub Khan

Simla Agreement

July 2, 1972

1. The Government of India and the Government of Pakistan are resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of a friendly and harmonious relationship and the establishment of durable peace in the subcontinent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their peoples.

In order to achieve this objective, the Government of India and the Government of Pakistan have agreed as follows:

- (i) That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries;
- (ii) That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations;
- (iii) That the prerequisite for reconciliation, good neighborliness and durable peace between them is a commitment by both the countries to peaceful co-existence, respect for each other's territorial integrity and sovereignty and non-interference in each other's internal affairs, on the basis of equality and mutual benefit;
- (iv) That the basic issues and causes of conflict which have bedeviled the relations between the two countries for the last 25 years shall be resolved by peaceful means;
- (v) That there shall always respect each other's national unity, territorial integrity, political independence and sovereign equality;
- (vi) That in accordance with the Charter of the United Nations they will refrain from the threat of use of force against the territorial

integrity or political independence of each other.

2. Both Governments will take steps within their power to prevent hostile propaganda directed against each other. Both countries will encourage the dissemination of such information as would promote the development of friendly relations between them.

3. In order progressively to restore and normalize relations between the two countries step by step, it was agreed that:

- (i) Steps shall be taken to resume communications, postal, telegraphic, sea, land including border posts, and air links including overflights.
- (ii) Appropriate steps shall be taken to promote travel facilities for the nationals of the other country.
- (iii) Trade and cooperation in economic and other agreed fields will be resumed as far as possible.
- (iv) Exchange in the fields of science and culture will be promoted.

In this connection delegations from the two countries will meet from time to time to work out the necessary details.

4. In order to initiate the process of establishment of durable peace, both the Governments agree that:

- (i) Indian and Pakistani forces shall be withdrawn to their side of the international border.
- (ii) In Jammu and Kashmir, the line of control resulting from the cease-fire of December 17, 1971 shall be respected by both sides without prejudice to the recognized position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from the threat or the use of force in violation of this Line.

(iii) The withdrawals shall commence upon entry into force of this Agreement and shall be completed within a period of 30 days thereof.

5. This Agreement will be subject to ratification by both coun-

tries in accordance with their respective constitutional procedures and will come into force with effect from the date on which the Instruments of ratification are exchanged.

6. Both Governments agree that their respective Heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalization of relations, including the questions of repatriation of prisoners of war and civilian interests, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.

(Indira Gandhi)

Prime Minister

Republic of India

(Zulfikar Ali Bhutto)

President

Islamic Republic of
Pakistan

Simla, the 2nd July, 1972

Autonomy Committee Recommendations

As Reported By Agencies, 15 Aug. 1999.

Centre shall have control only on Defence, Foreign and Communication' Autonomy Committee recommends restoration of pre-52 situation Article 370 be made a special provision instead of temporary Revival of nomenclature for head of State, executive suggested.

JAMMU: The State Autonomy Committee has unanimously recommended the restoration of 1952 Delhi Agreement in Jammu and Kashmir under which the Centre would have no control over the State excepting three subjects of Defence, External Affairs and Communications. The Committee has also suggested that Article 370, which grants special status to the State, be made a "special provision" instead of "temporary provision" which exists in the Constitution at present.

The Committee, whose report was tabled in the Legislative Assembly on April 13 and circulated to legislators and media men today, has also recommended changes in the Constitution for changing the nomenclature of the Head of the State and State Executive, mode of appointment of Head of the State and other consequential amendments, superintendence, direction and control of elections to the State legislature and State High Court. It called for deletion of almost all laws made applicable to the State after 1953 including Article 356 of the Constitution, which empowers Centre to dismiss a State Government.

The Autonomy Committee, which was rendered an "all National Conference affair" following the resignation of former Union Minister Dr Karan Singh as its Chairman, is unanimous in its recommendations. The report has been signed by all nine members including Ghulam Mohi-ud-Din Shah, Chairman (who had replaced Dr Karan Singh after his resignation), Mr Abdul Ahad Vakil, Speaker of the Assembly, Mr Abdul Rahim Rather, Mr P L Handoo, Mr Bodh Raj Bali and Moulvi Iftikhar Hussain Ansari, all Cabinet Ministers in the Farooq Government, Mr Kushok Thiksay, Mirza Abdul Rashid and Sardar Teja Singh, member-convener.

The Committee has recommended that matters in the Union list not connected with the three subjects of Defence, External Affairs and Communications and/ or Ancillary thereto but made applicable should be excluded from their application to the State. All modifications made in Article 246 in its application to the State subsequent to 1950 order should be rescinded, it said.

According to the Committee report Article 248, 249, 250 and 251 whether applied in original or substituted/ modified form should be omitted from their application to the State, Article 254 should be restored to the position it had in its application to the State in 1954 and Article 262 and 263, which were not applicable under 1950 Order but were subsequently extended to the State, should cease to apply. As in 1950 and 1954, List II (State) and List III (Concurrent) of the Seventh Schedule shouldn't be applicable to the State.

Favouring conversion of "temporary provision" of Article 370, applied to J&K, as "special provision", the report said the word 'temporary' be deleted from the title of part XXI of the Constitution of India and the word 'temporary' occurring in the heading of Article 370 be substituted by the word 'special'.

Elaborating on Article 370, the report said the word 'temporary' has been issued in the title of Part XXI and heading of Article 370 of the Constitution of India. This was because of the provision contained in Clause (3) of this Article which came into being at a time when the Constituent Assembly of the State was yet to be convened. This Article could cease to be operative if the President of the Republic were to issue a notification to this effect on the basis of a recommendation of the State Constituent Assembly.

"So it should have been indicated as early as 1956 that it would be a misnomer to call Article 370 a 'temporary provision'. In fact it had then become and had to continue as a special provision of the Indian Constitution applicable to J&K.

The Committee said all amendments in the Constitution of Jammu and Kashmir made vide Constitution of Jammu and Kashmir (First Amendment) Act, 1959 in so far as they relate to superintendence, directions and control of elections to State Legislature and

to the State High Court and Constitution of J&K (Sixth Amendment) Act, 1965 relating to change of nomenclature of the Head of the State and State Executive, mode of appointment of the Head of the State and other consequential amendments should be repealed and the original provisions of Constitution of J&K be restored. It may be recalled that prior to 1952, the Chief Minister of J&K was designated as 'Prime Minister' and Governor as 'Sadar-e-Riyasat'.

"The provisions of the Constitution of India specified in Second Schedule and the matters specified in the first Schedule to the Constitution (Application to J&K) Order, 1950 and the matters agreed to by the representatives of the State and the Union vide Delhi Agreement of 1952 should continue to apply to the State subject to the same exceptions and modifications as are specified in the said Order and the Delhi Agreement", the reports said.

It said: "all orders issued thereafter under Clause (1) of Article 370 of the Constitution of India by the President, applying various provisions and matters of the Constitution of India to the State, whether in full or in modified form or making any change in the provisions or matters already applied by 1950 Order or agreed to under Delhi Agreement, should be rescinded and the provisions or matters so applied to the State should cease to apply".

Also, it said, the changes made in the State Constitution vide Constitution of J&K (First Amendment) Act, 1959 and Constitution of J&K (Sixth Amendment) Act, 1965 be repealed and the original provisions of the Constitution of J&K as adopted by the State Constituent Assembly on November 17, 1956 be restored.

The Committee recommended that Article 356, under which the Centre could dismiss the State Government, should be made non-applicable to the State as was the position in 1954. Besides Article 356, it also recommended that Article 355, 357, 358, 359 and 360 should also be made non-applicable to the State. It said Part III of Fundamental Rights should be deleted and a separate chapter on Fundamental Rights be included in the State Constitution.

Referring to extended jurisdiction of the Supreme Court over matters in regard to J&K, the Autonomy Committee observed: "nor-

mally, there can be no dispute now with the extended jurisdiction of Supreme Court over matters regarding to J&K, but it had got to be recorded that this aspect of State-Union relationship was not settled at the time of Delhi Agreement of 1952 and after the events of 1953 quick decisions were forced upon the flawed Constituent Assembly followed by a number of Constitution (Application to J&K) orders".

"The position which ultimately has emerged is that J&K has been accorded the same status as the rest of the States except for the above form of Article 133 and 134 applied to the State. The State had at that time a High Court whose judgements were subject to appeal/review before His Highness, advised in his judicial functions by a Board of Judicial Advisors consisting of eminent jurists/knowledgeable persons. That has not to be and re-opening that chapter may not sound appropriate now except, of course, where adopting of provisions of the Union judiciary for the State have in a way infringed upon the corresponding provisions of the State Constitution in regard to State High Court", it said and recommended that Article 72 (1) (c), 72 (3), 133, 134, 135, 136, 138, 145 (1) (c) and 151 (2) should be made non-applicable to the State as was the position in 1950 Order.

Besides, Article 149, 150 and 151 should apply to the State in the form in which they were in 1954. Article 218 be omitted in its application to the State and the position as it existed before the J&K Constitution (First Amendment Act) of 1959 restored. Article 220, 222 and 226 should also be omitted in their application to Jammu and Kashmir.

Regarding finance, property, contracts and Suits, the report said the matter be discussed between the State representatives and the Union Government as agreed to during the talks in 1952 Delhi Agreement.

On Services under Union and the States, it said in Article 312 the words "including State of Jammu and Kashmir" inserted by the Constitution (Application to J&K) Order 1958 be omitted.

Elaborating on the aspect of services, the report said "notwithstanding seemingly an attractive proposition one can say without

any fear of contradiction that it has dwarfed local talent and made it difficult for local youth to aspire to compete for key civil posts on competitive basis. The weak-kneed attempt to organise Kashmir

Civil Services is neither here nor there and increasing inflow of All India Services has meant pretty little in the field for which the services were apparently conceived.

"Ever since the application of these provisions of the Indian Constitution to our State, the number of direct recruits from the State has been negligible. The problem has attained so unpleasant a shape even in the national context that demands of greater number of promotees from local services all over the country have assumed alarming proportions", it said.

The Committee said the Indian Constitution has restricted the power of the State legislature to amend its own Constitution. This uncalled for clog on the constituent powers of State legislature needs to be removed lock, stock and barrel. As such, it recommended that Clause (4) of Article 368 added vide C.O. 101 be deleted, Clause (2) of Article 368 should apply with the proviso already introduced by 1954 Order and Clause (i) thereof which was not in existence in 1954 and was introduced in 1971 should remain omitted in its application to the State.

The Committee recommended that entries in the Union list, which were applied to the State by 1950 Application Order should continue and all other entries made applicable to the State by subsequent orders should be omitted. The concurrent list was not applicable under 1950 Order and it was also agreed in the Delhi Agreement that this should not apply to the State. hence all subsequent orders applying various entries from this list should be rescinded.

It recommended that consistent with the requisite changes as many become necessary consequent upon change in the Article of the Constitution of India in their application to J&K as a result of this report be effected in the Schedules concerned.

It also suggested that application of Article 338, 339, 340, 341 and 342 to the State should be omitted and the corresponding provi-

sions made in the State Constitution.

Regarding Amendment of the Constitution of India, the report said Clause (4) of Article 368 added vide C.O. 101 be deleted and Clause (2) of the Article should apply with the proviso already introduced by 1954 order and Clause (i) thereof which was not in existence in 1954 and was introduced in 1971 should remain omitted in its application to the State. In the Seventh Schedule entries in the Union List not applied to the State by the Constitution (Application to J&K) Order, 1950 should be omitted. Concurrent List, which was not applicable to the state in 1950 but was applied by subsequent order, should cease to apply to the State.

Referring to elections, the report said, since elections to the State legislature are held under laws made by the State Legislature, Article 324 should continue to apply in the manner and the way it was applicable in 1950/1954 order. This is particularly so when the State Constitution had provisions relating thereto. The change brought about in this Part after 1954 be reversed and consequential changes in other Article in this Part be effected, it recommended.

Baroness Nicholson of European Parliament: Committee on Foreign Affairs: provisional Draft Report

EUROPEAN PARLIAMENT

2004

2009

Committee on Foreign Affairs

PROVISIONAL

23.11.2006

DRAFT REPORT

on Kashmir: present situation and future prospects

Committee on Foreign Affairs

Rapporteur: Baroness Nicholson of Winterbourne

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on Kashmir: present situation and future prospects

The European Parliament,

-having regard to its recent resolutions referring to Jammu and Kashmir, in particular its resolutions of 29 September 2005 on EU-India relations: A Strategic Partnership 1, of 17 November 2005 on Kashmir 2, of 18 May 2006 on the Annual Report on Human Rights in the World 2005 and the EU's policy on the matter 3, of 28 September 2006 on the EU's economic and trade relations with India 4, of 22 April 2004 on the EC-Pakistan, Cooperation Agreement 5 and of 22 April 2004 on the situation in Pakistan 6,

-having regard to the resolutions of the United Nations Security Council on this issue,

-having regard to the report on the visits of Parliament's *ad hoc* delegation to Jammu and Kashmir adopted by the Committee on Foreign Affairs in November 2004,

-having regard to the devastating earthquake which struck Jammu and Kashmir on 8 October 2005,

-having regard to the visit of President Musharraf of the Islamic Republic of Pakistan to the Committee on Foreign Affairs on 12 September 2006,

-having regard to the 7th EU-India Summit held in Helsinki on 13 October 2006,

-having regard to the visits made by Parliament's rapporteur to both sides of the Line of Control (LoC) in June 2006,

-having regard to Rule 45 of its Rules of Procedure,

-having regard to the report of the Committee on Foreign Affairs (A6-0000/2006),

A. whereas the territory which constituted the former Princely State of Jammu and Kashmir is currently administered in separate parts by the Republic of India, the Islamic Republic of Pakistan and the People's Republic of China, and has a total population of 13.4 million,

B. whereas much of Jammu and Kashmir, in particular Azad Jammu and Kashmir (AJK), suffers from extreme poverty and neglect, with enormous deficiencies in basic literacy and numeracy, access to healthcare, lack of democratic structures and major deficiencies in the rule of law and justice; and whereas the whole of Jammu and Kashmir suffers from exceptional economic decline,

C. whereas the question of water resources is a factor underlying the dispute between Pakistan and India over Jammu and Kashmir and is central to any definitive resolution,

D. whereas Jammu and Kashmir has been divided by war for nearly 60 years, a period punctuated by armed conflicts between India, Pakistan and China; whereas the conflicts between India and

Pakistan now involve international terrorism, and whereas both nations are now nuclear powers,

E. whereas a ceasefire has been in place on the LoC since November 2003 and, despite a few breaches, has continued to hold,

F. whereas the ceasefire has enabled India and Pakistan to engage in an on-going dialogue on Jammu and Kashmir which is now starting to be modestly successful, and whereas a number of Confidence-Building Measures (CBMs) are being implemented as part of the peace process; and whereas the Kashmiri people on both sides are being fully involved and integrated into that process, taking local responsibility,

G. whereas on the morning of 8 October 2005 an earthquake of magnitude 7.6 on the Richter Scale, the most devastating international earthquake in living memory, struck a broad swathe of territory from Afghanistan through Pakistan and India, but with by far the greatest impact felt in Jammu and Kashmir, with exceptional losses in AJK,

H. whereas in minutes the earthquake claimed over 75,000 lives in AJK, later rising to 88,000, and claimed 6,000 in Indian-administered Jammu and Kashmir, and left tens of thousands of people injured and millions entirely displaced, with minimal basic needs provision and without permanent shelter, employment, health care and education, on the Pakistani side; whereas dozens of towns and villages have been partially or totally destroyed, agriculture decimated and the environment contaminated, and whereas levels of development have been set back centuries,

Introduction

1. Stresses that both India and Pakistan are important EU partners; notes that the EU has not been invited to take on a mediating role in the Kashmir dispute; nevertheless thinks that the EU may have something to offer based on past experience of conflict resolution in a multi-ethnic, multinational, multi-faith context; therefore offers the present resolution and any meetings that may come out of it as part of a shared experience from which the EU can also learn;

2. Notes that both countries are now members of the nuclear club; draws attention to the fact that India is the world's largest democracy and has a functioning democracy at local level, whereas Pakistan still has to show that it is respecting democratic principles in a great many areas;

3. Notes that the impact of the earthquake on the Pakistani Kashmiris has gravely exacerbated the already exceptionally sparse basic needs provision and has dramatically impaired institution and capacity-building potential;

4. Underlines the common heritage shared by India and Pakistan, exemplified in the ancient culture of Jammu and Kashmir; recognises and values the pluralism, multiculturalism and multi-faith nature and traditions of the peoples of Jammu and Kashmir;

5. Urges the Governments of Pakistan and India to resolve the crucial riparian issues affecting the head waters and the use of the rivers flowing through Jammu and Kashmir (the Indus, Jhelum, Chenab, Ravi, Beas and Sutlej rivers) as swiftly as possible; nevertheless, urges that the agricultural, fishing, livestock and human water requirements of the local people remain a key priority;

Impact of the earthquake of 8 October 2005

6. Strongly emphasises that the earthquake has had an immense impact on the lives of the people on both sides of the political divide, and that the vast humanitarian situation has completely changed the political conditions on the ground in AJK; regrets that it has made everyday life virtually impossible for millions of people who were already among some of the most disadvantaged in the region; underlines that day-to-day survival is now the overwhelming priority for the people;

7. Regrets that, in addition to the massive loss of life, AJK suffered incalculable material damage to its infrastructure (hospitals, schools, government buildings, communication channels) and to what were in many cases already fragile basic institutions and services;

8. Is deeply saddened that the earthquake had a disproportionate impact on children, nearly wiping out a whole generation of Pakistani Kashmiris, which may well be the most devastating long-term impact of the earthquake; is highly concerned about reports of child trafficking in the aftermath of the disaster, given that even before the earthquake mechanisms for child protection were virtually non-existent;

9. Draws attention to the plight of three million Internally Displaced Persons (IDPs) created by the earthquake in AJK; in the absence of a convention on the rights of IDPs, welcomes the UN's 'Guiding Principles' which offer the basis for a humane response to the insidious assault of forced displacement on human rights; demands that Pakistan respect these principles supported by the international community and strongly recommends that the EU focus consistently on them, as well as on broader issues of democracy, justice and human rights in Pakistan; notes also that on both sides of the LoC long-standing 'refugee' camps should be dismantled, and proper attention paid to their occupants' protection, needs and social integration;

10. Stresses that the disaster struck a region already weakened by 60 years of festering conflict, one which is in the eye of the storm of the war against terrorism, and where fundamental institutions have been constantly undermined by organised crime and terror networks exploiting Pakistan as a major base, using the rugged terrain and institutional deficiencies of that country to undermine regional stability;

11. Is appalled that the already minimal basic "rights" enjoyed by Pakistani Kashmiris before the earthquake (i.e. food, water, shelter, sanitation, schools, and barely adequate health-centres) have been decimated, compounding a situation notable for a lack of democracy and the existence of oppressive and unjust laws, especially those applicable to women;

12. Strongly emphasises that, in the context of the massive destruction and social upheaval wrought by the earthquake on an already weakened democratic base, and given the enormous serious-

ness of the humanitarian situation, continuing calls for a plebiscite on the final status of Jammu and Kashmir are wholly out of step with the needs of the local people and thus damaging to their interests; urges those playing 'big power' politics when millions are in basic need to redirect their energies to fighting the corruption that has wrongly diverted the flow of international funding away from the intended recipients; notes that, even without the earthquake, any plebiscite would have been meaningless without a change in policy from Islamabad, which maintains that all of Kashmir is an integral part of Pakistan's territory; underlines furthermore that a plebiscite without such a policy change could be no more than a rubber stamp on the status quo;

13. Notes that Indian-administered Jammu and Kashmir was less affected by the earthquake than its neighbour (tens of thousands made homeless, as opposed to millions on the Pakistani side) and has been better able to cope; applauds the competence with which the emergency was addressed by the government, the local population and the army; notes that, as a result, of the 30,000 who lost their homes, all now have housing due in large measure to an intelligent self-help policy instituted by the government;

Political situation: the aspirations of the people

14. Congratulates India and Pakistan on the peace moves currently under way, and welcomes the fact that bilateral talks, put on hold for three months after the July 2006 bombings in Mumbai, have re-started; stresses the need for the region, the EU and the international community to support the current bilateral talks and for a further strengthening of exchanges, with the aim of generating a more stable and prosperous future for the people of Jammu and Kashmir;

15. Has warmly welcomed the CBMs initiated by India and Pakistan, which are achieving a moderate degree of success in reducing tension and suspicion on both sides;

16. Draws attention to the fact that ordinary Kashmiris, by virtue of the humanitarian situation after the earthquake, are now becoming intimately involved in the modalities of the peace

process, through the exchanges taking place and the free movement (albeit still limited) across the LoC;

17. Regrets, however, that Pakistan has consistently failed to fulfil its obligations to introduce meaningful and representative democratic structures in AJK; notes in particular the continuing absence of Kashmiri representation in the Pakistan National Assembly, the fact that AJK is governed through the Ministry of Kashmir Affairs in Islamabad, that Pakistan officials dominate the Kashmir Council and that the Chief Secretary, the Inspector-General of Police, the Accountant-General and the Finance Secretary are all from Pakistan; abhors the provision in the 1974 Interim Constitution which forbids any political activity that is not in accordance with the doctrine of Jammu and Kashmir as part of Pakistan and obliges any candidate for a parliamentary seat in AJK to sign a declaration of loyalty to that effect; is concerned that the Gilgit-Baltistan region enjoys no form of democratic representation whatsoever;

18. Recognises that Pakistan finds itself in a particularly complex situation with pressure from many sources; nevertheless:

-deeply regrets that the lack of a national political will to address basic needs provision, political participation and the rule of law in AJK has left women there in a desperate situation following the earthquake;

-highlights particularly, in this context, the recent threats aimed at derailing planned amendments to the rape laws, and the repugnant Hudood Ordinances themselves which, despite the will of President Musharraf, have recently been reconfirmed by a national parliament in which neither the women nor the men of AJK have any representation; nonetheless welcomes and wholeheartedly supports the efforts made by reformist parliamentarians to repeal these abhorrent laws;

-notes too the difficult situation faced by homosexuals;

19. Urges the EU to take a firm stance against the abomination of the Hudood Ordinances and to revisit, critically, the 3rd Generation Cooperation Agreement it signed with Pakistan in 2004, Article

1 of which states very clearly that the Agreement must be based on a true respect for human rights and the upholding of true democratic principles, given that it is pre-eminently clear that Pakistan is not living up to its commitments, especially in AJK;

20. Urges Pakistan to revisit its concept of democratic accountability, minority and women's rights in AJK, which as elsewhere are key to improving conditions for the people and tackling the menace of terrorism;

21. Deplores documented human rights violations by the armed forces of India and the all too frequent incidents of terror and violence perpetrated by armed militant groups based in Pakistan; strongly urges both sides to do all they can to address these violations; welcomes Pakistan's public commitments to curb infiltration across the LoC by militants operating out of territory under its control, but believes it must take much stronger and more effective measures; welcomes the continued and determined commitment by President Musharraf to fighting terrorism, which, it is widely recognised, presents enormous challenges; approves and supports multilateral and bilateral EU Member State aid to assist Pakistan in fighting terrorism and in making determined efforts to improve the lives of the people of AJK;

22. Recognises and supports the aspiration of the Kashmiri people for a significantly reduced military presence in the area; points out, however, that meaningful demilitarisation can only take place alongside genuine action to neutralise the threat of infiltration of Jammu and Kashmir by militant outfits operating out of Pakistan;

23. Notes that while Indian-administered Jammu and Kashmir enjoys a unique status under Article 370 of the Indian Constitution, granting it greater autonomy than other states in the Union, there remain deficiencies in practice with regard to human rights and direct democracy; is pleased, therefore, to see recent moves in Jammu and Kashmir to strengthen democracy (as evidenced by the 75% turnout in recent local elections); urges India's National Human Rights Commission (NHRC) to exercise its full mandate with regard to any suspected or documented violations and, to lend

it even greater credibility, urges the NHRC to make good the absence of any human rights professionals on its governing board; looks forward to enhanced progress in this area, and to positive outcomes from the new laws on child labour and on women and violence;

24. Recognises the difficult living conditions of a number of groups, such as the migrant Pandits of the Kashmir Valley; urges that discrimination against them and other groups, particularly in employment, be addressed head on; suggests that such groups seek to empower themselves by establishing committees of their own elected representatives, ensuring that women and under-25s are properly represented;

25. Suggests that India consider granting Ladakh the same provincial status as that enjoyed by Jammu and Kashmir; hopes that the Kargil-Skardu trade route can be re-established as part of the CBM process and that the Ladakh/Northern Areas division can be bridged by crossing points similar to those already established elsewhere along the LoC; suggests that India re-examine the issue of whether the people of Ladakh could also enjoy representation in the Rajya Sabha;

26. Urges India to renew its focus on Jammu and Kashmir, including job creation and measures to promote tourism, and to examine how the (forthcoming) EU-India partnership could help with the creation of new skills-based jobs, especially for youth; Response to the earthquake of 8 October 2005

27. Acknowledges that the response to the earthquake from the international community, India and Pakistan (with some initial exceptions due to bureaucratic rigidity and lack of coordination) was swift: there were immediate contacts at the highest level between India and Pakistan; domestic and local NGOs responded well, working with the local and central administrations;

28. Congratulates all those involved in identifying and addressing the public health needs of earthquake survivors in camps, which, despite the challenges associated with the provision of clean potable water and appropriate sanitation facilities in post-disaster situations, have not seen major outbreaks of water-borne dis-

eases;

29. Notes that Pakistan established a Federal Relief Commission within days of the disaster to coordinate search and rescue and relief operations; regrets, however, that Pakistan declined Indian offers of helicopters, on the grounds of their pilots' nationalities, as well as cross-LoC joint relief operations, medical relief teams and repair of telecom infrastructure, all of which could have significantly contributed to reducing casualties;

30. Welcomes the funds so speedily pledged by Pakistan's neighbouring states (India, China, Iran, Afghanistan) and, on a wider regional basis, by Turkey and the Organization of the Islamic Conference (OIC), and by the international community as a whole; congratulates the European Commission, and, in particular DG ECHO, already present in Pakistan, for its immediate and effective response; encourages donors to deliver as swiftly as possible on their original pledges;

31. Highlights the fact that the initially hesitant reaction to the disaster by the Pakistani military created a needs vacuum in the immediate aftermath, which was exploited by militant organisations on the ground, such as the Jamaat-i-Islami, and Jamaat-ud-Dawa, the renamed Lakshar-e-Tayyaba (declared a terrorist organisation and, as such, banned by the Musharraf government in 2002), who swiftly became *de facto* providers of food, lodging, schooling for children and welfare for widows; is very concerned that this has bolstered the credibility of such polarising groups in the eyes of the local population, further undermining any potential for genuine democratic representation;

32. Urges the international community to use its massive reconstruction pledges to, among other things, support Pakistan's democratic transition; is deeply concerned about corruption and especially recurring reports that these funds may be being diverted to support armed jihadi groups; urges the international donor community to do all it can to implement safeguards and to monitor closely the use of funds delivered;

33. Urges the EU and its institutions not to let the plight of the people of Jammu and Kashmir disappear from the radar screen and to ensure that aid and other programmes are designed and implemented with long-term recovery and institution-building in mind;

Confidence-Building Measures

34. Particularly welcomes the steps taken to reunite families divided by the LoC through the opening of five crossing points; is aware that the opening-up of meeting points on the LoC has been described as being demonstrably slow and not responding to the urgency of the situation on the ground; none the less, encourages and looks forward to increasingly frequent crossings; would like to see these extended to all citizens on both sides and recommends that India and Pakistan instigate measures to facilitate travel, e.g. increased consular services;

35. Believes it is vital to increase the frequency of cross-LoC exchanges at all levels of civil society and across all walks of life; suggests that exchange programmes be created between professional associations, schools and academics, including a common University with a campus on either side of the divide; to help reduce levels of mutual suspicion between the armies on either side, suggests that military-to-military contacts be initiated through exchanges between National Defence Colleges;

36. At the political level, recommends that a Joint India-Pakistan Parliamentary Committee be established to foster greater parliamentary exchanges and dialogue; similarly, that joint local government working parties be established to explore trade and tourism issues;

37. Encourages EU multinationals to recognise the investment potential of Jammu and Kashmir, and in particular the existence of a skilled, educated workforce on the Indian side; suggests that European businesses might enter into joint ventures with local companies and that investment insurance schemes be created to boost investor confidence;

38. Recognises the outstanding work being undertaken by the

Commission's delegation in Islamabad;

39. Stresses that tourism has considerable potential to bolster the local economy; therefore encourages EU Governments to keep a close eye on the security situation, with a view to ensuring up-to-date, coordinated travel advice to those wishing to travel to Jammu and Kashmir;

40. Underlines that, as the EU's own experience demonstrates, one of the keys to improving relations between countries is through increasing bilateral trade flows; believes that, in the case of Jammu and Kashmir, cross-LoC trade is particularly vital to generating economic growth, development and the unlocking of its economic potential; recommends that road and infrastructure projects be made a priority;

41. Warmly welcomes the forthcoming initiative to open a road trade route between Srinagar and Muzaffarabad; strongly encourages both sides to move rapidly to significant volumes of trade; urges swift agreement on the modalities of road freight, with an emphasis on simplifying them as far as possible;

42. Strongly supports continuing initiatives by the political establishments on both sides and at all levels and urges them to give priority to the needs of the people of Kashmir, both materially and institutionally, so that their political, economic, social and cultural disadvantages can be redressed; recommends that the EU be available to respond to requests from either government;

43. Notes that natural disasters sometimes create the political conditions for peacemaking; recalls that in a BBC interview on 21 October 2005 President Musharraf wanted the LoC to be made 'irrelevant' so that it could handle the groundswell of human misery from the aftermath of the earthquake; regrets that while the immediate aftermath of the earthquake offered India and Pakistan a chance to take joint and sustainable action, this opportunity was only partially taken up; urges the two sides to look upon the quake as a wake-up call that nature knows no borders and that it is only together that they can offer the people of Kashmir any hope of rebuilding a future;

44. Instructs its President to forward this resolution to the Council, the Commission and the Member States of the European Union, to the Governments of the Republic of India, the Islamic Republic of Pakistan and the People's Republic of China, and to the United Nations.